

19 AUGUST 1947

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Of
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1 Tuesday, 19 August 1947

2 - - -

3
4 INTERNATIONAL MILITARY TRIBUNAL
5 FOR THE FAR EAST
6 Court House of the Tribunal
7 War Ministry Building
8 Tokyo, Japan

9 The Tribunal met, pursuant to adjournment,
10 at 0930.

11 - - -

12 Appearances:

13 For the Tribunal, all Members sitting, with
14 the exception of: HONORABLE JUSTICE STUART McDOUGALL,
15 Member from the Dominion of Canada and HONORABLE
16 JUSTICE I. M. ZARAYANOV, Member from the USSR., not
17 sitting from 0930 to 1600; and HONORABLE JUSTICE E. H.
18 NORTHCROFT, Member from the Dominion of New Zealand,
19 not sitting from 1330 to 1600.

20 For the Prosecution Section, same as before.

21 For the Defense Section, same as before.

22 - - -

23 (English to Japanese and Japanese
24 to English interpretation was made by the
25 Language Section, IMTFE.)

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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now in session.

3 THE PRESIDENT: Mr. Tavenner.

4 MR. TAVENNER: If it please the Tribunal,
5 I find that it is imperative to ask the indulgence
6 of the Tribunal in regard to a matter.

7 We make the request that the Tribunal permit
8 us to recall the witness YAMAMOTO for further cross-
9 examination. I do not think that it would require
10 more than fifteen or twenty minutes of time. The
11 proposed cross-examination relates to a matter which
12 was not covered in cross-examination before and which,
13 by the exercise of due diligence, we could not have
14 anticipated.

15 THE PRESIDENT: According to the American
16 rule applied here, cross-examination must be confined
17 to matters arising out of examination-in-chief. There
18 could be exceptions bearing on credibility; I realize
19 that.

20 MR. TAVENNER: This matter relates to the
21 testimony-in-chief of the witness.

22 THE PRESIDENT: Do you suggest you found
23 material for cross-examination within those limits
24 which was not available to you before?

25 MR. TAVENNER: That is precisely correct,

1 your Honor. The information came to us for the first
2 time after the closing of court yesterday.

3 THE PRESIDENT: Does the defense wish to be
4 heard before we come to a decision?

5 MR. BLAKENEY: We feel that while the request
6 is somewhat unusual and while, as I remember, the
7 same privilege had been denied us, we have no desire
8 to obstruct the full disclosure of the facts and,
9 therefore, do not object to the request.

10 THE PRESIDENT: The witness is recalled for
11 further cross-examination.

12 MR. TAVENNER: If the Tribunal please, the
13 witness is not present. I believe that his presence
14 can be obtained possibly by two o'clock, or one-thirty,
15 preferably.

16 THE PRESIDENT: Very well.

17 MR. TAVENNER: May the marshal be directed
18 to get in touch with the witness and have him present
19 at that time?

20 THE PRESIDENT: We direct accordingly.

21 MR. BLAKENEY: I call as my next witness,
22 KAMEYAMA, Kazuji, whose testimony is contained in
23 his affidavit, defense document 1079.
24
25

- - -

1 K A Z U J I K A M E Y A M A, called as a witness
2 on behalf of the defense, being first duly
3 sworn, testified through Japanese inter-
4 preters as follows:

5 DIRECT EXAMINATION

6 MR. BLAKENEY: Before qualifying the witness,
7 I wish to call attention to a correction which has
8 been made by him in the affidavit. On page 4, the
9 paragraph numbered 10, line 3, delete the words
10 "which were received by the Embassy;" and in the follow-
11 ing line delete the words "morning of the" and alter
12 the word "in" to the word "on."

13 BY MR. BLAKENEY:

14 Q Please state your name and residence,
15 Mr. Witness.

16 A KAMEYAMA, Kazuji; Gifu Prefecture, Seki-machi,
17 885 Kurachi.

18 Q I am having you handed defense document
19 No. 1079, and I ask that you examine that and state
20 to the Tribunal whether that is your affidavit, bearing
21 your signature and seal.

22 A This is my affidavit without mistake.

23 Q Are the contents thereof true and correct?

24 A That is so.

25 MR. BLAKENEY: I offer in evidence the

1 affidavit, defense document No. 1079.

2 THE PRESIDENT: Admitted on the usual terms.

3 CLERK OF THE COURT: Defense document 1079
4 will receive exhibit No. 2964.

5 (Whereupon, the document above
6 referred to was marked defense exhibit
7 No. 2964 and received in evidence.)

8 MR. BLAKENEY: I read the affidavit which,
9 omitting formal parts, is as follows:

10 "1. I entered the Japanese Foreign Ministry
11 in February 1922, and served as Chief of the Cable
12 Section of the ministry from September 1940 to
13 October 1942. I shall state herein matters which came
14 to my knowledge in the course of my official business
15 in that position.

16 "2. On 7 December 1941 a telegram was sent
17 by Foreign Minister TOGO to Ambassador NOMURA in
18 Washington to the effect that the AP and UP news
19 agencies were reporting that the State Department had
20 made public that the President had sent a personal
21 telegram to the Emperor, and that the matter should
22 be investigated and a report made (defense document
23 No. 1401-F-3)," which is now exhibit No. 2961.

24 "Simultaneously the Ambassador had sent a telegram
25 dated 6 December to the effect that the President was

1 reported to have sent a telegram to the Emperor
2 (defense document 1. 91-E-3)," which is now exhibit
3 2962.

4 "I, as Chief of the Cable Section of the
5 Foreign Ministry, was aware of these two telegrams,
6 but I did not see the contents of the reported tele-
7 gram of the President at that time. I recall that
8 only on 8 December, as I remember it, was I informed
9 by the American Bureau of the Foreign Ministry that a
10 personal telegram of the President had been transmitted
11 from the American Ambassador to our hands.

12 "3. The cable Section of the Foreign Ministry
13 used to obtain copies of coded telegrams to and from
14 diplomatic and consular representatives in Japan for
15 the purpose of research in coding technique. As a
16 matter of fact, the Cable Section sent messengers to
17 the competent section of the Communications Ministry
18 to receive such copies, and their receipt by the
19 Foreign Ministry was delayed one or two days after
20

1 receipt by the Communications Ministry. It was the
2 custom at the time that the code research group of
3 the Cable Section did not work Saturday afternoons
4 and Sundays. As 7 December 1941 was a Sunday, there
5 was nobody working in the afternoon of the 6th and
6 all day the 7th. It was not possible, consequently,
7 for the Foreign Ministry to have decoded the telegram
8 of the President on 7 December.

9 "Presumably the code research group of the
10 Foreign Ministry in the usual course received the
11 President's telegram in code from the competent section
12 of the Communications Ministry on 8 or 9 December.
13 (Foreign telegrams in code were not received by me,
14 but went directly to members of the code research group
15 and were dealt with by them.) The personnel of the
16 group at that time was very small, and only about five
17 were engaged in research on the Anglo-American codes.
18 The situation was therefore that, of the coded tele-
19 grams received daily, only a small proportion of the
20 decodable ones was actually decoded. In addition,
21 the Foreign Ministry received some decoded telegrams,
22 mainly from the army high command. There is nothing
23 to show that the President's telegram was decoded by
24 the Foreign Ministry, nor anything to show that it
25 received a decoded copy thereof from the army high

1 command. For, all such telegrams which were either
2 decoded by the code research group or obtained by the
3 group in decoded text were submitted to me as Chief
4 of Cable Section, and I have no recollection of having
5 seen the decoded telegram of the President's message.

6 "4. It is true, as has been stated, that
7 the code research group of the Foreign Ministry received
8 in those days from the competent section of the Commu-
9 nications Ministry telegrams sent and received by
10 diplomatic and consular representatives in Japan, but
11 it had nothing to do with the delivery and dispatch of
12 those telegrams by the Communications Ministry. The
13 code research group of the Foreign Ministry merely
14 obtained copies of those telegrams from the competent
15 section of the Communications Ministry after they had
16 been delivered or dispatched as the case might be.
17 The Foreign Ministry never intervened in the delivery
18 or dispatch of those foreign telegrams. The Foreign
19 Ministry thus had nothing to do with any delay in the
20 delivery to the American Embassy of the telegram of
21 the President.

22 "5. I recall that I received the original
23 copy of the memorandum of the Japanese Government to
24 the United States prior to the start of the war in
25 the afternoon of 6 December 1941 from the section in

1 charge of the matter (the first section of the American
2 Bureau), and had it coded immediately in fourteen parts.
3 The results of an investigation made at the Tokyo
4 Central Telegraph Office and reported to me by my sub-
5 ordinates at my order in December 1941 showed that
6 the first thirteen parts were telegraphed from the
7 cable room of the Foreign Ministry to the Central Tele-
8 graph Office between 8:30 p.m. on the 6th and 12:20 a.m.
9 on the 7th, and that the latter cabled them to the
10 United States between 10:10 p.m. on the 6th and 1:50 a.m.
11 on the 7th.

12 "The dispatch of the fourteenth part was
13 withheld, at the request of the section in charge of
14 the matter, until notice should be given by them.
15 That section requested at about 4 p.m. of the 7th that
16 it be cabled, and steps were immediately taken to that
17 end. Of this part the same text was sent through the
18 MKY and the RCA, two American cable companies, at an
19 hour's interval in order to assure speedy and accurate
20 receipt in Washington. The report of the same inves-
21 tigation disclosed that the fourteenth part was cabled
22 from the Central Telegraph Office at 5 p.m. on the
23 7th through MKY and at 6 p.m. on the 7th through RCA.

24 "6. Prior to the dispatch of our memorandum,
25 an instruction had been sent from the Foreign Ministry

1 at 8:30 p.m. on 6 December to the effect that as soon
2 as our memorandum to the United States had been re-
3 ceived preparation of the document and all the necessary
4 arrangements were to be made so that the memorandum
5 might be handed to the United States at any time upon
6 the receipt of the instruction to deliver it (exhibit
7 1216). This telegram was sent, according to the above-
8 said investigation, from the Central Telegraph Office
9 to the United States at 9:10 p.m. on the 6th.

10 "7. The instruction to hand the memorandum
11 to the United States at 1 p.m., 7 December, Washington
12 time (exhibit 1218), was cabled through two channels,
13 MKY and RCA, to make sure of speedy and accurate de-
14 livery, and investigation showed that it was sent from
15 the Central Telegraph Office to the United States at
16 6:30 p.m., 7 December, through the MKY, and at 6:28 p.m.
17 through the RCA.

18 "8. One technical error was discovered by an
19 examination conducted immediately after the coding, in
20 one of the first thirteen parts of the coded telegram
21 (I recall that it was something like the dropping of
22 one line), and a telegram of correction was immediately
23 sent (it was, of course, a very simple one). The
24 exact time of dispatch of this telegram of correction
25 cannot be learned, the record kept in the Cable Section.

1 at 8:30 p.m. on 6 December to the effect that as soon
2 as our memorandum to the United States had been re-
3 ceived preparation of the document and all the necessary
4 arrangements were to be made so that the memorandum
5 might be handed to the United States at any time upon
6 the receipt of the instruction to deliver it (exhibit
7 1216). This telegram was sent, according to the above-
8 said investigation, from the Central Telegraph Office
9 to the United States at 9:10 p.m. on the 6th.

10 "7. The instruction to hand the memorandum
11 to the United States at 1 p.m., 7 December, Washington
12 time (exhibit 1218), was cabled through two channels,
13 MKY and RCA, to make sure of speedy and accurate de-
14 livery, and investigation showed that it was sent from
15 the Central Telegraph Office to the United States at
16 6:30 p.m., 7 December, through the MKY, and at 6:28 p.m.
17 through the RCA.

18 "8. One technical error was discovered by an
19 examination conducted immediately after the coding, in
20 one of the first thirteen parts of the coded telegram
21 (I recall that it was something like the dropping of
22 one line), and a telegram of correction was immediately
23 sent (it was, of course, a very simple one). The
24 exact time of dispatch of this telegram of correction
25 cannot be learned, the record kept in the Cable Section.

1 having been destroyed by fire; but it cannot have been
2 later than the early hours of the 7th, because several
3 telegraph clerks were on duty throughout the night
4 of the 6th to the 7th.

5 "There was one more telegram of correction,
6 replacing one word in the original text of the memo-
7 randum. The original text of the telegram shows that
8 it was cabled from the Foreign Ministry to the Central
9 Telegraph Office at 7:20 p.m., 7 December (defense
10 document No. 2050-A)," and it should be added, 2050-B,
11 which I now offer in evidence.

12 THE PRESIDENT: Admitted on the usual terms.

13 MR. BLAKENEY: Although the prosecution advised
14 me that they had the document, apparently the clerk
15 has not, so we will pass it for the time being.

16 I therefore continue with the affidavit.

17 "In the light of the then prevailing situation
18 this telegram should have been sent from the Central
19 Telegraph Office to the United States not more than an
20 hour after its dispatch from the Foreign Ministry to
21 the Central Telegraph Office.
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1 "8(a) For convenience of reference, the
2 comparative Tokyo and Washington times for the hours
3 mentioned above are as follows (the time difference
4 being 14 hours):

5 "Instruction to Washington to prepare
6 memorandum immediately upon receipt, sent to Central
7 Telegraph Office: Tokyo time, 8:30 P. M., the 6th;
8 Washington time, 6:30 A. M., the 6th.

9 "Instruction to Washington to prepare memo-
10 randum immediately upon receipt, sent from Central
11 Telegraph Office: Tokyo time, 9:10 P. M., the 6th;
12 Washington time, 7:10 A. M., the 6th.

13 "13 parts of memorandum sent from Cable
14 Section to Central Telegraph Office: Tokyo time,
15 8:30 P. M., the 6th, to 12:20 A. M., the 7th; Washington
16 time, 6:30 A. M. to 10:20 A. M., the 6th.

17 "13 parts of memorandum sent from Central
18 Telegraph Office: Tokyo time, 10:10 P. M., the 6th to
19 1:50 A. M., the 7th; Washington time, 8:10 A. M. to
20 11:50 A. M., the 6th.

21 "First Section, American Bureau, ordered 14th
22 part sent: Tokyo time, 4:00 P. M., the 7th; Washington
23 time, 2:00 A. M., the 7th.

24 "14th part sent to Central Telegraph Office:
25 Tokyo time, 4:00 P. M., the 7th; Washington time,

1 2:00 A. M., the 7th.

2 "14th part sent from Central Telegraph
3 Office, via MKY: Tokyo time, 5:00 P. M., the 7th;
4 Washington time, 3:00 A. M., the 7th. Via RCA: Tokyo
5 time, 6:00 P. M., the 7th; Washington time, 4:00 A. M.,
6 the 7th.

7 "Instructions to deliver memorandum at
8 1 P. M., 7th December (Washington time) sent to
9 Central Tel. Office: Tokyo time, 5:30 P. M., the 7th;
10 Washington time, 3:30 A. M., the 7th.

11 "Instructions to deliver memorandum at 1 P. M.,
12 7th December (Washington time) sent from Central Tel.
13 Office, via RCA: Tokyo time, 6:28 P. M., the 7th;
14 Washington time, 4:28 A. M., the 7th. Via MKY: Tokyo
15 time, 6:30 P. M., the 7th; Washington time, 4:30 A. M.,
16 the 7th.

17 "Cable correcting one word in memorandum sent
18 to Central Telegraph Office: Tokyo time, 7:20 P. M.,
19 the 7th; Washington time, 5:20 A. M., the 7th."

20 I understand the document 2050-A and B is
21 now here, and I therefore renew the offer of it.

22 THE PRESIDENT: Admitted on the usual terms.

23 CLERK OF THE COURT: Defense document 2050-A
24 and 2050-B will receive exhibit No. 2965.

25 (Whereupon, the document above

referred to was marked defense exhibit
No. 2965 and received in evidence.)

MR. BLAKENEY: I do not propose to read
the exhibit other than to point out the notation
thereon that it was dispatched at 7:20 P. M. on the
7th of December, and that it corrects one word in
the original memorandum.

Resuming the affidavit with paragraph 9:

"9. Knowing that, the communications con-
ditions between Japan and the United States at that
time being generally very good, it did not take more
than 30 minutes to an hour for communication, I
ordered these various messages sent on the supposi-
tion that the times of their arrival in Washington
would be (Washington time):

"(a) the telegram instructing preparation of
the document and other necessary matters, at about
8 A. M., 6 December;

"(b) the first thirteen parts of the memo-
randum, approximately between 9 A. M. and 1 P. M. of
the 6th;

"(c) the fourteenth part of the memorandum,
between 4 and 5 A. M. of the 7th;

(c) the telegram of instructions of the time
of delivering the memorandum, at about 5:30 A. M. of

1 the 7th.

2 "All the telegrams concerning the Japanese-
3 American negotiations were handled as 'Government'
4 and in view of the tenseness of the situation at
5 that time, the American telegraph companies presumably
6 handled the telegrams concerning the negotiations
7 speedily. Supposing it to have taken as long as two
8 hours for delivery to the Japanese Embassy in Wash-
9 ington after receipt in the United States, it may be
10 assumed that the telegram in (a) of the preceding
11 paragraph was delivered to the Embassy at about
12 10 A. M., 6 December, that in (b) between 11 A. M. and
13 3 P. M. on the 6th, that in (c) between 6 and 7 A. M.
14 on the 7th, and that in (d) at about 7:30 A. M. on the
15 7th. As to the two telegrams of correction, the one
16 correcting the technical error should have been de-
17 livered to the Embassy at latest prior to the delivery
18 of the fourteenth part of the memorandum; and the
19 other, correcting one word in the text of the memo-
20 randum, should have been delivered by 9:30 A. M. of
21 7 December at the latest.

22 "10. Those telegrams sent from the Foreign
23 Ministry to the Japanese Embassy in Washington sub-
24 sequently to the dispatch of the thirteen parts of the
25 memorandum toward the late hours of 6 December and on

1 the 7th are as follows, according to my memory and
2 as disclosed by the telegrams themselves: (a) correc-
3 tion of technical error; (b) instruction to keep
4 strict secrecy (exhibit 1217); (c) the fourteenth
5 part of the memorandum (defense document No. 2045;
6 (d) inquiry about the President's telegram to the
7 Emperor (defense document 1401-F-3)," now exhibit
8 2961; "(e) instruction indicating the time of
9 delivering the memorandum (exhibit 1218); (f) in-
10 struction to destroy the coding machine; (g) the
11 Minister's greeting to Ambassadors NOMURA and KURUSU;
12 (h) greeting of the Director of the American Bureau
13 to Counselor IGUCHI and other members of the Embassy;
14 (i) instruction indicating the number of the final
15 telegram; and (j) correction of one word in the text
16 of the memorandum (defense document No. 2050-A and B),"
17 now exhibit 2965. "If my memory serves me correctly,
18 the telegram correcting one word in the text of the
19 memorandum was the last."

20 At this point I wish to offer in evidence
21 defense document No. 2045, referred to in the preced-
22 ing paragraph.

23 THE PRESIDENT: Admitted on the usual terms.

24 CLERK OF THE COURT: Defense document 2045
25 will receive exhibit No. 2966.

1 (Whereupon, the document above
2 referred to was marked defense exhibit
3 No. 2966 and received in evidence.)

4 MR. BLAKENEY: I do not propose to read
5 this document, which is merely a part of a document
6 already in evidence. It is offered for the purpose of
7 showing the precise division into parts of the final
8 message and the length of the fourteenth part.

9 THE PRESIDENT: The last word of paragraph 7
10 should be "lost," should it not?

11 MR. BLAKENEY: Yes, sir.

12 THE PRESIDENT: L-o-s-t.

13 MR. BLAKENEY: I wish simply to point out
14 that this is part 14 of the fourteen parts, and that
15 on it appears the following note which is not in the
16 complete document:

17 "(Note -- In the forwarding instructions to
18 the radio station handling this part, appeared the
19 plain English phrase 'VERY IMPORTANT.')"

20 Resuming the reading of the affidavit:

21 "All those telegrams except the fourteenth
22 part of the memorandum were simple ones composed of
23 not more than a few lines. The decoding, by one
24 coding machine, of the fourteenth part would have
25 taken twenty or thirty minutes but each of the rest

1 of them would have been decoded in ten or fifteen
2 minutes each. All those telegrams therefore could
3 have been decoded in about two hours.

4 "The Embassy had been instructed to the
5 effect that there should always be some clerks on
6 duty in the cable section. Moreover, an instruc-
7 tion had been sent to the effect that the document
8 and all the necessary preparations were to be made
9 ready beforehand (exhibit 1216). In these circum-
10 stances the Foreign Ministry sent these telegrams
11 to the Japanese Embassy in Washington with the con-
12 viction that even if a considerable amount of time
13 should be necessary for typing the memorandum, there
14 would be a sufficient amount of time so that our
15 memorandum be handed to the United States without
16 fail at 1 P. M., 7 December, Washington time.

17 "11. Allowing for the decoding of the
18 first thirteen parts of the memorandum to the United
19 States to take six hours and a half at the longest,
20 I assumed that the decoding would have been completed
21 by 0:30 P. M., 6 December, Washington time, even if the
22 decoding was started after the last of the thirteen
23 had arrived. As a matter of fact, each part should
24 have been decoded as soon as it had arrived, so that
25 the writing of the clean copy of the memorandum could

1 have been started before 9:30 P. M. (the instruc-
2 tions for the preparation of the memorandum having
3 been sent before the memorandum itself was cabled).
4 Moreover, the telegram making the technical correction
5 concerning one of the thirteen parts was sent by the
6 early morning of 7 December, and there was no doubt
7 that it was sent before the fourteenth part of the
8 memorandum (the arrival of the fourteenth part at
9 the Embassy is assumed to have been between 6 and 7
10 A. M., 7 December). Consequently, the Embassy must
11 have received the telegram on the technical correc-
12 tion by 7 A. M., 7 December, Washington time, by the
13 latest, and could have decoded it without delay. The
14 last telegram, correcting one word in the text of the
15 memorandum, should have been received and decoded not
16 later than 10 A. M., 7 December, Washington time.
17 Therefore, even if the officers and clerks of the
18 Embassy concerned had taken a normal rest from
19 6 to 7 o'clock, the full text of the entire memorandum
20 in fourteen parts could have been written in clean copy
21 by 11 A. M., 7 December, Washington time, by the latest.
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KAMEYAMA

DIRECT

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1 "12. It having become known in the Foreign
2 Ministry through radio broadcast from America that
3 the delivery of the memorandum to the United States
4 of 7 December had been delayed in Washington, Foreign
5 Minister TOGO instructed me upon the return of the
6 Embassy staff from the United States to conduct an
7 investigation of the matter. In the course of the
8 investigation which I accordingly carried out, it was
9 reported to me by one of the telegraph clerks of the
10 Embassy in Washington who returned on the exchange
11 boat in August 1942 that the instruction for pre-
12 paration of the memorandum so that it could be handed
13 to the United States any time had been received by
14 the Embassy in the forenoon of 6 December, Washington
15 time; that the memorandum had started to arrive at
16 the Embassy from about noon of the same day, and the
17 thirteen parts had been decoded by about 11 P.M. of
18 the same day; that the fourteenth part of the memo-
19 randum had arrived at the Embassy by about 7 A.M. of
20 the 7th; and that the telegraph clerks of the Embassy
21 finished decoding the fourteenth part about 12:20 P.M.
22 KONDO, and the other telegraph clerks of the Embassy
23 at that time who returned home in March 1946 on the
24 boat repatriating the Japanese diplomats from Europe,
25 reported in general to the same effect.

KAMEYAMA

DIRECT

1 "13. The Foreign Ministry was often asked
2 by other government agencies to obtain information
3 concerning economic, financial, military and other
4 matters abroad, and instructed its establishments
5 abroad to obtain and report such data. Since the
6 gathering of such information and their communication
7 to the government agencies which had asked for them
8 had no direct relationship to the decision and exe-
9 cution of diplomatic policies, instructions of such
10 nature, when cabled, were generally drafted by officers
11 in the section in charge of the matter and, with the
12 approval of the bureau director and the section chief,
13 or sometimes of the section chief only, were forwarded
14 to the Cable Section for dispatch. In practice, there-
15 fore, the Minister and the Vice-Minister had nothing
16 to do with such telegrams, and they were generally
17 dealt with at the responsibility of the bureau direc-
18 tor, or more often that of the chief of the section,
19 in charge of the matter. When a telegram of infor-
20 mation in response to such instructions was received,
21 the Cable Section forwarded it to the bureau director
22 and the section chief concerned, and the section in
23 charge sent it to the government agency which has asked
24 for it. Parallel with such procedure, the Cable Sec-
25 tion sometimes sent copies of such telegrams directly

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1 to the government agencies which had made the request,
2 but that practice was a supplementary measure to meet
3 their executive requirements.

4 "All telegrams sent from the Foreign Ministry
5 to its establishments abroad were sent in the name of
6 the Foreign Minister, and all the telegrams from its
7 overseas establishments to the Foreign Ministry were
8 addressed to the Foreign Minister. Of these tele-
9 grams, however, the Foreign Minister examined only
10 those telegrams which were deemed important, and
11 there were many which were not brought to his atten-
12 tion. While I was Chief of the Cable Section, for
13 instance, some two hundred telegrams were received
14 and some one hundred dispatched daily, only about one
15 tenth of which were submitted to the Foreign Minister
16 for examination.

17 "I recall that, while I was Chief of the
18 Cable Section, instructions were sent for gathering
19 information concerning the movement of warships and
20 merchant vessels in Hawaii, Manila, Java and other
21 places, and that telegrams in reply thereto were re-
22 ceived. These communications were all dealt with in
23 accordance with the procedure above described, and I
24 have no recollection that any of them, either sent
25 from or received by the Foreign Ministry, was submitted

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1 for review to the Foreign Minister or the Vice-
2 Minister."

3 By leave of the Tribunal, I have one or two
4 additional questions which I should like to put.

5 BY MR. BLAKENEY (Continued):

6 Q Mr. Witness, in paragraph 3 of your affidavit
7 you refer to the practice of sending messengers to the
8 Foreign Ministry, who received copies of foreign tele-
9 grams. Will you tell us when, how often, and on what
10 occasions those messengers were sent?

11 A Generally speaking, messengers were sent
12 from the Cable Section of the Foreign Office to the
13 Communications Ministry once a day, at the most twice
14 a day. However, on Sundays no messengers were sent.

15 Q Were the messengers sent on special instruc-
16 tions or on standing instructions?

17 A They were sent on standing instructions.

18 Q From what time, if you know, had the practice
19 existed of sending such messengers to the Communications
20 Ministry for this purpose?

21 A From the time of my predecessor as Chief of
22 the Cable Section.

23 Q What instructions were given these messengers
24 in connection with what material they should get from
25 the Communications Ministry?

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5 BY MR. BLAKENEY (Continued):

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19 existed of sending such messengers to the Communications
20 Ministry for this purpose?

21 A From the time of my predecessor as Chief of
22 the Cable Section.

23 Q What instructions were given these messengers
24 in connection with what material they should get from
25 the Communications Ministry?

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1 A Generally speaking, they were copies of
2 coded telegrams sent to and from diplomatic and
3 consular representatives in Japan.

4 Q Were the messengers given special instruc-
5 tions on each trip what messages they would get?

6 A No, no such instructions were ever given.
7 They went, so to speak, mechanically every day.

8 Q Then, who decided which material they re-
9 ceived, the Foreign Ministry or the Communications
10 Ministry?

11 A The Foreign Ministry office took whatever
12 the Communications Ministry would give it.

13 Q In connection with the research in decoding
14 which was being conducted in your section, were you
15 conducting such decoding and research on a large scale?

16 A The Cable Section of the Foreign Office was
17 carrying on this research only on a very small and
18 limited scale.

19 Q Was that research carried on with cipher
20 machines?

21 A We had no cipher machines.

22 Q How many of the codes, then in use by the
23 American diplomatic officials, were you able to de-
24 cipher or decode?

25 A I believe there were not more than three or

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1 four.

2 Q Out of how many?

3 A According to my recollection, there seemed
4 to have been eight or nine altogether.

5 MR. BLAKENEY: I think you may cross-examine.

6 MR. TAVENNER: If the Tribunal please, I
7 desire to call attention to paragraph 3 of the affi-
8 davit, on the first page, relating to the sending of
9 messengers to the Communications Division for messages.
10 The prosecution relies on the testimony of SHIRAO at
11 page 10,567 with regard to this general subject, and
12 I desire to point out that there was no cross-
13 examination of that witness suggesting the matter
14 set forth in this paragraph in this affidavit.

15 The prosecution does not desire to cross-
16 examine.

17 MR. BLAKENEY: I request that the witness
18 be released on the usual terms.

19 THE PRESIDENT: The witness is discharged on
20 the usual terms.

21 (Whereupon, the witness was excused.)

22 MR. BLAKENEY: I now call as a witness
23 YUKI SHIROJI, whose testimony is contained in defense
24 document 2604.

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1 S H I R O J I Y U K I, called as a witness on
2 behalf of the defense, being first duly sworn,
3 testified through Japanese interpreters as
4 follows:

DIRECT EXAMINATION

BY MR. BLAKENEY:

6 Q Mr. Witness, please state your name and
7 residence?

8 A YUKI SHIROJI; Liaison Office, Fukuoka City.

9 Q I ask that you be handed defense document
10 2064, that you examine that and state to the Tribunal
11 whether it is your affidavit, bearing your signature
12 and seal.

13 (Whereupon, a document was handed
14 to the witness.)

15 A This is my affidavit without mistake.

16 Q And, are the contents thereof true and
17 correct?

18 A Yes, they are.

19 MR. BLAKENEY: I offer in evidence the affi-
20 davit, defense document 2064.

21 THE PRESIDENT: Admitted on the usual terms.

22 CLERK OF THE COURT: Defense document 2064
23 will receive exhibit No. 2967.

24 (Whereupon, the document above
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1 referred to was marked defense exhibit
2 No. 2967 and received in evidence.)
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1 MR. BLAKENEY: I read the affidavit,
2 omitting the formal parts:

3 "1. I entered the Foreign Ministry in April
4 1927. In December 1940 I was appointed Chief of the
5 First Section of the Bureau of American Affairs of
6 the Ministry, serving in that position until October
7 1941. In November I was appointed, in the capacity of
8 a senior secretary, to accompany Ambassador KURUSU
9 on his mission to the United States, and left with him
10 on November 5. I remained at the Embassy in Washington,
11 engaged in the business of the Japanese-American
12 negotiations, until the outbreak of the Pacific war.
13 I was accordingly concerned, directly or indirectly,
14 in the general business of the embassy with regard
15 to the negotiations, though I was not a regular member
16 of the embassy staff. Therefore, I have knowledge of
17 the facts concerning the delay in the delivery of the
18 memorandum of the Japanese Government to the United
19 States on 7 December 1941, and state herein the
20 circumstances thereof. (The time I use in this state-
21 ment is Washington time, 14 hours earlier than Tokyo
22 time.)

23 "2. Telegraphic instructions from the
24 Japanese Foreign Ministry, deciphered by noon of 6
25 December (Saturday) had instructed us that they were

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1 going to send, by separate telegrams, the memorandum
2 of the Japanese Government in response to the
3 American proposal of 26 November; that it would be
4 the following day before this long message would be
5 completely received (it was actually sent in 14 parts,
6 the last of which was delivered on the morning of 7
7 December); and that, in consideration of the delicate
8 situation, the receipt of the memorandum should be
9 kept in strict secrecy (in this connection, we were
10 instructed by another telegram -- Exhibit 1217 --
11 to take every prudent measure to keep it in secret,
12 and especially, not to entrust the preparation of the
13 memorandum to typists). We were further told that we
14 would be instructed later of the time for handing the
15 memorandum to the United States, and that all necessary
16 steps, including the preparation of the documents,
17 should be taken promptly so that the memorandum could
18 be delivered at any time upon receipt of instructions
19 (Exhibit 1216). Subsequently, the 14 parts into which
20 the memorandum was divided began to arrive, and the
21 first 8 or 9 parts had already been deciphered by
22 dinner-time (about 7 P.M.) that evening.

23 "There was a farewell dinner, which I did not
24 attend, for a member of the embassy staff who was
25 being transferred to another post; I had dinner with

1 Ambassador NOMURA, then retired to my bedroom. On
2 Sunday morning, 7 December, I went to the so-called
3 Secretaries' Room of the Embassy, which is in the
4 Ambassador's residence, at about 9, and there found
5 Secretary OKUMURA busy typing the memorandum. The
6 typing apparently had not been started on the night
7 of the 6th. As the staff of the cable section began
8 arriving soon afterward, I learned from talking with
9 them that after the dinner of the night before the
10 whole staff of the cable section (Telegraph Officer
11 HORIUCHI and clerks KAJIWARA, HORI, KAWABATA, KONDO
12 and YOSHIDA) had returned to the office and resumed
13 the work of deciphering at about 9:30, the deciphering
14 of the ~~first~~ 13 parts being finished before midnight.
15 Having nothing to do but to wait for the 14th part to
16 be delivered, the members of the cable section had
17 then busied themselves, while waiting for it, in
18 disposing of the remnants of the cipher machine which
19 had been destroyed on the night of 5 December in
20 accordance with the order of the Foreign Minister.
21 The 14th part, I learned, had not arrived during the
22 night, and Counselor IGUCHI having advised the members
23 of the cable section to retire, they returned to their
24 respective lodgings before dawn, leaving a duty officer.
25

"3. While Secretary OKUMURA (who was the

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1 only senior official of the Embassy staff who
2 could operate a typewriter at all decently) typed
3 the memorandum, I proof-read the typed pages in the
4 adjoining room with Chancellor NAKAJIMA. Before my
5 arrival (between 7 and 8 o'clock, I was told) several
6 telegrams had been delivered, and the night duty
7 officer had called up all the members of the cable
8 section at their respective lodgings--finding, to
9 his uneasiness, that, having left the office only a
10 short time before, they were not prepared for prompt
11 attendance. At from 9:30 to 10 they had all gathered
12 in the office and from 10 o'clock they set about
13 deciphering the telegrams. Telegrams marked 'urgent'
14 were first deciphered. The greetings of the Foreign
15 Minister and the Director of the American Bureau
16 came first, then a few telegrams of corrections. It
17 was about 11 o'clock that they deciphered the telegram
18 directing that the memorandum be handed to the United
19 States (to the Secretary of State if possible) at
20 1 P.M., 7 December (Exhibit 1218).

21 "In accordance with Ambassador NOMURA's order,
22 eleve-interpreter ENSEKI promptly called the Secretary
23 of State at his private residence, asking for an
24 appointment for an interview at 1 P.M. The Secretary
25 of State replied that, as he had a previous engagement

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1 for lunch, he wished that the Ambassadors would
2 meet Under-Secretary Welles in his stead. Shortly
3 after, we received a telephone message to the effect
4 that the Secretary of State himself would receive
5 the Japanese ambassadors at 1 P.M. at the State
6 Department.

7 "4. Meanwhile, by 11 A.M. Secretary OKUMURA
8 had finished typing the memorandum as far as the
9 13th part. However, saying that that copy was meant
10 to be a draft and was not well-typed, and that there
11 was still plenty of time before 1 o'clock, he began
12 to type the draft over again with the assistance of
13 interpreter ENSEKI. That day, however, they were under
14 such a strain that they were slower and making more mis-
15 takes than usual. This became more perceptible as time
16 passed after we had received the instructions to hand
17 the memorandum to the United States at 1 P.M. As the
18 above-mentioned telegram of correction was deciphered,
19 however, they were compelled to retype a page which
20 they had barely finished typing. Another telegram
21 directing the insertion of a sentence of one or two
22 lines which had been dropped out of the memorandum,
23 forced them again to retype, not only the page in
24 question but also the following page, on account of the
25 slipping down of lines. At any rate, in these

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1 circumstances it took longer than we had expected,
2 and time flew by rapidly. It was around 12:30 P.M.,
3 as I remember, that the deciphering of the 14th part,
4 the last part of the memorandum, was sent to the
5 Secretaries' Room. The typing of the thirteen parts,
6 however, was not yet completed by that time.

7 "5. In the meantime, Ambassador NOMURA came
8 frequently to the Secretaries' Room to press for
9 the document. Ambassador KURUSU also was holding
10 himself in readiness to start, and was waiting im-
11 patiently for the completion of the typing.

12 "As it became clear that the typing could
13 not be completed in time for the appointed hour,
14 interpreter ENSEKI, by order of Ambassador NOMURA,
15 told the secretary to Secretary Hull that the call of
16 the two ambassadors might be delayed because the
17 necessary document was not yet ready, and received a
18 reply that Mr. Hull would expect the Japanese ambassadors
19 as soon as the preparations were completed. It was
20 already about 1:50 when Secretary OKUMURA and Interpreter
21 ENSEKI finished the typing. The two ambassadors, who
22 had been waiting at the entrance-hall of the Embassy,
23 started for the State Department as soon as they
24 received the typewritten memorandum. I understand
25 that they reached there at about 2 o'clock, were kept

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1 waiting for about twenty minutes, and met the
2 Secretary of State about 2:20 and handed him the
3 memorandum."

4 You may cross-examine.

5 MR. TAVENNER: The prosecution does not
6 desire to cross-examine, if the Tribunal please.

7 MR. BLAKENEY: I ask that the witness be
8 released on the usual terms.

9 THE PRESIDENT: He is released accordingly.

10 (Whereupon, the witness was excused.)

11 - - -

12 MR. BLAKENEY: As evidence of the time at
13 which the various messages at present under consideration
14 were received in the United States, as well as in
15 corroboration of the previous evidence of the time of
16 dispatch from Tokyo, I offer in evidenc defense docu-
17 ment 1500-F-6, an excerpt from Pearl Harbor Attack,
18 the proceedings of the Joint Committee of Investigation
19 of the Congress of the United States.

20 THE PRESIDENT: Mr. Tavenner.

21 MR. TAVENNER: If the Tribunal please,
22 objection is made to the introduction of this document
23 on the ground that it is irrelevant and immaterial.
24 This, and the succeeding document are of the 1500
25 series, of which we have had many offered and many

1 rejected.

2 As to the statement of counsel that it is
3 in corroboration of the sending of the messages,
4 the position of the prosecution is that that is en-
5 tirely unnecessary as the time of sending of these
6 messages is not disputed.

7 As to the other position taken by counsel
8 that they are being tendered for the purpose of showing
9 the time at which the United States received the
10 intercepts, we contend likewise that that is immaterial
11 and irrelevant.

12 A great many documents dealing with that
13 subject have been rejected and I think it is hardly
14 necessary to repeat the reasons for the objections again.

15 THE PRESIDENT: Major Blakeney.

16 MR. BLAKENEY: The last part of counsel's
17 objection deals with a ground on which I did not offer
18 this evidence. The evidence is offered as part of a
19 chain of proof on a point originally raised by the
20 prosecution and now being met by the defense. It has
21 been the prosecution contention, repeated as late as
22 yesterday, that the final message to the United States
23 was sent so late, and was deliberately sent so late,
24 that it was known in Japan it could not be delivered
25 at the time appointed.

1 In meeting that proof, rather those innuendoes,
2 the defense is undertaking to show the hour at which
3 the messages were sent, the hour at which they were
4 received in the United States -- I didn't say "by the
5 United States" -- and the hour by which translation
6 and processing could with diligence have been performed.
7 And the document now under consideration showed nothing
8 more or less than the fact of the hour at which the
9 several messages were heard in the United States, were
10 received in short.

11 If this proof is relevant to the issue so
12 framed by the prosecution, I feel that the mathematical
13 argument founded on the fact that the number of the
14 document is 1500 something, is of no moment. It doesn't
15 matter where the proof comes from.

16 I therefore submit that this document is clearly
17 relevant to one of the issues in the case.

18 THE PRESIDENT: There is no cross-examination
19 of the last two witnesses. I take it that in the
20 absence of any indication to the contrary to indicate
21 it, prosecution do not contest what they said. There
22 was a reference to earlier evidence by prosecution's
23 witness which may imply some challenge of the statements
24 we have heard from the box this morning, but to that
25 extent only.

1 Mr. Tavenner.

2 MR. TAVENNER: If the Tribunal please, I
3 feel that I should make it clear from the standpoint
4 of the prosecution that we do not intend by mere
5 failure to cross-examine to agree with what a witness
6 says on the stand.

7 THE PRESIDENT: Where you have offered evidence
8 to the contrary that is so, but these witnesses said
9 a lot which I do not recollect to be covered by
10 prosecution's evidence. The last witness clearly
11 puts the blame for the delay on Japanese clerks in
12 the Foreign Office or Ambassador's office in Washington.
13 What evidence of yours contradicts that?
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1 MR. TAVENNER: If it please the Tribunal, I
2 was addressing my remarks to the larger question and
3 not confining it purely to the testimony of the last
4 two witnesses.

5 As to your direct question with regard to the
6 placing of the blame upon the Embassy staff in Washing-
7 ton, the prosecution has offered no direct evidence
8 to the contrary.

9 THE PRESIDENT: It would be a matter pecul-
10 iarly within the knowledge of the Japanese Embassy in
11 Washington, and you could not be expected to contra-
12 dict them except by evidence as to what happened ex-
13 ternally to that office.

14 I think we all understand the prosecution to
15 be contending that the High Command and the Foreign
16 Minister, and perhaps others, did conspire to delay
17 the message in Japan so that it could not be delivered
18 in time in Washington. The document last offered would
19 tend to combat that.

20 MR. TAVENNER: If the Tribunal please, aside
21 from the ruling as to the admissibility of this docu-
22 ment, my main purpose in arising was to state the
23 prosecution's view with regard to the cross-examination
24 of witnesses. In response to the remark of your Honor,
25 we are perfectly aware of the fact that adverse

1 inferences may be drawn by reason of our failure to
2 cross-examine, but we do not understand, and have
3 never understood, that the failure to cross-examine
4 infers that we agree with the statement that is being
5 made by the witness.

6 THE PRESIDENT: That all depends on the cir-
7 cumstances.

8 While you were offering evidence of atrocities
9 I did suggest that failure to cross-examine would
10 amount almost to admission, and nobody contested it
11 that I recollect.

12 It would depend upon the ability the cross-
13 examiner could have to test the credibility of the
14 witness on the point. We would have to take that into
15 account.

16 MR. TAVENNER: Then, we take it that that is
17 particularly true when the facts are not within the
18 peculiar knowledge of the prosecution in regard to
19 the matter, as in this instance it was impossible for
20 the prosecution to know what occurred within the con-
21 fines of the Japanese Embassy at Washington.

22 And, the reasonableness of the witness' story
23 is a matter to be contested in summation, we take it,
24 rather than by long cross-examination. We have endeav-
25 ored, as far as humanly possible for us to do, to

1 judicially determine this question in order that this
2 case be not unduly prolonged.

3 THE PRESIDENT: There are no shortcuts to
4 proper judicial determinations. Cross-examination
5 still remains the principle means of testing credit.

6 MR. TAVENNER: That is perfectly true in
7 the view of the prosecution, and in important and
8 material things we propose to resort to it where we
9 think there is a reasonable chance of developing the
10 prosecution's theory.

11 THE PRESIDENT: We will recess for fifteen
12 minutes.

13 (Whereupon, at 1050, a recess was
14 taken until 1110, after which the proceed-
15 ings were resumed as follows:)

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1 MARSHAL OF THE COURT: The International Mil-
2 itary Tribunal for the Far East is now resumed.

3 THE PRESIDENT: Mr. Tavenner.

4 MR. TAVENNER: If the Tribunal please, I am
5 confident that no such rule as the one announced exists
6 in the United States. I am certain it does not exist
7 in any court in which I have ever practised.

8 THE PRESIDENT: What rule are you referring
9 to? State the rule so that we know.

10 I suggest that cross-examination is always
11 expected where the witness makes an adverse state-
12 ment, where you have materials, where you can cross-
13 examine, where his statement is not obviously foolish,
14 and where you have not already covered it by your
15 evidence. I know nothing about your United States
16 rules. I am not a United States lawyer. But I do
17 know something about British rules and I do claim
18 that what I say is in accordance with British rules
19 and practice. I have had the advantage of discussing
20 this matter with my colleagues during the recess and
21 I know of no dissent from the rule as stated to you.
22 No cross-examination is called for where a witness is
23 obviously talking foolishly, or is of no consequence;
24 but you are not suggesting for one second that those
25 last two witnesses are in that class. My remarks are

1 directed to those two witnesses, their testimony.

2 MR. TAVENNER: I understood your Honor to
3 state that the prosecution, by failure to cross-
4 examine a witness, agreed with the testimony of the
5 witness.

6 THE PRESIDENT: Your failure to cross-examine
7 one of those witnesses surprised at least two British
8 judges here, if not three; and at least two, if not
9 three, thought you were admitting what he said.

10 MR. TAVENNER: If your Honor will permit me
11 to continue with the statement that I propose to make,
12 I think I can make myself clear.

13 THE PRESIDENT: It is no use discussing the
14 different legal systems, it is only a waste of time
15 so far as I can gather. You can always make yourself
16 clear. You can always say that, no matter what my
17 misapprehension may have been, I intended this, that
18 or the other thing, and I will always take it into
19 account, and so will the other judges. That is suffic-
20 ient. There is no use in discussing the difference
21 between the American system, the British system,
22 the Dutch system, or the Russian system; we have no
23 time for that here, nor would it lead us anywhere.
24
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1 MR. TAVENNER: As I stated, if your Honor
2 please, when I first arose, I was addressing my re-
3 marks to the larger question that your Honor mentioned,
4 and that was whether or not the prosecution admits as
5 true a statement by a witness who is not cross-examined
6 by the prosecution. Now, that is a very important ques-
7 tion, and if you will permit me just one or two minutes
8 of the Tribunal's time, I would like to make some com-
9 ment on that.

10 I merely referred to the fact that such a
11 technical rule, if one exists in the British Commonwealth
12 of Nations -- and I don't dispute that -- does not ex-
13 ist in the United States. That, of course, is no posi-
14 tive reason why it should not be adopted by this Tribu-
15 nal. I recognize that. I don't think any American
16 counsel for either the defense or the prosecution will
17 be heard to say that such a rule exists in any superior
18 court in the United States. I don't see how such a
19 rule can exist in many of the countries represented on
20 the Tribunal, because the very right of cross-examina-
21 tion is not recognized in some of them.

22
23 Regardless of the attitude of various Members
24 of the Tribunal on this question, I want to make it
25 clear that as far as the prosecution is concerned, there
is no intent or purpose or design to admit as true a

1 thing that a witness states where there is no cross-
2 examination. Now, this question was raised by Mr.
3 Levin in an early phase of the case and I thought the
4 matter was entirely disposed of. It appears at page
5 20,587 of the transcript. Recognizing the inferences
6 that Members of the Tribunal may draw in their own
7 mind where cross-examination does not occur, yet we
8 feel that there should be no technical rule applied
9 which would be the equivalent of an admission by the
10 prosecution where no cross-examination occurs.

11 THE PRESIDENT: I take it to be your view
12 that where a prejudicial statement is made, where it
13 is serious, where you have materials with which to
14 cross-examine, and where you fail to do so, no adverse
15 inference should be drawn by the Tribunal, although
16 you have not covered the matter by your own evidence?
17 Those are the points I made to you. You are contesting
18 them all.

19 MR. TAVENNER: We are, if your Honor please,
20 contesting them to the extent that the prosecution is
21 in any sense bound by it. We have proceeded throughout
22 this trial with this in mind, that where we don't know
23 what a witness's answer will be, where we haven't
24 proof that we can establish a different line of thought
25 from that expressed by the witness, cross-examination

1 on the point may be futile and there is no excuse for
2 us going on a fishing expedition in regard to it.

3 THE PRESIDENT: I said twice, and I say a
4 third time, where you have materials for cross-examina-
5 tion.

6 MR. TAVENNER: Of course we understand, as
7 you have warned us a number of times, that we should
8 not in cross-examination repeat the prosecution's evi-
9 dence, so I understand you mean where there is no evi-
10 dence in the case.

11 That is all we have to say.

12 THE PRESIDENT: Mr. Tavenner, materials for
13 cross-examination and the prosecution's evidence already
14 given are not necessarily to be identified, as you know
15 and as every counsel in court knows.
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1 MR. TAVENNER: Now that is all I have to say
2 in regard to the over-all question, and now returning
3 to the question of this document I desire to point out
4 that in any analysis of it, it is nothing more than
5 repetitive. The fact that the messages were received
6 in the United States is nothing more than repetitive
7 of the fact that they were sent.

8 THE PRESIDENT: It is not offered as evidence
9 of the fact that they were received in the United
10 States but as evidence of the time at which they were
11 received there, which is another matter.

12 MR. TAVENNER: Not having disagreed in any
13 manner with the time in which they were sent, certainly
14 evidence of the time they were received could add
15 nothing to the time element.

16 THE PRESIDENT: Mr. Tavenner, the fact that
17 they were sent from Japan at a certain hour does not
18 involve their receipt in Washington at a certain hour
19 without proof as to when they were received in Washing-
20 ton. If it were a matter of common knowledge, like
21 the rising of the sun, that a telegram sent from
22 Tokyo at a certain hour would reach Washington at a
23 certain hour there would be no need to prove it; but
24 if we understood anything yesterday it was this: that
25 you were suggesting in effect that the Foreign Minister

1 in Japan and the High Command put their heads to-
2 gether to dispatch the messages at such a time that
3 they could not reach Washington in time to give proper
4 notice. If that is not so, you may correct it.

5 MR. TAVENNER: I would correct it only to
6 this extent: that the conspiracy extended to the
7 delaying of the message to the point where it ran
8 the risk of not being received in time.

9 THE PRESIDENT: That could be met by the
10 defense only by proving the times at which the
11 messages were received in Washington.

12 MR. TAVENNER: With your permission I will
13 make just one more remark in regard to it: that the
14 time the message was sent and consequently the time
15 it was received is not in dispute.

16 THE PRESIDENT: It is the first time you
17 have made that clear, Mr. Tavenner, although you did
18 say something earlier and we understood you to go
19 back on it.

20 If it is not in dispute, is it in evidence
21 already? If it is not in evidence and not in dispute
22 it should go in now because we know nothing that does
23 not appear in evidence.

24 MR. TAVENNER: It is not in evidence.

25 THE PRESIDENT: The objection is overruled

1 and the document admitted.

2 CLERK OF THE COURT: Defense document
3 1500-F-6 will receive exhibit No. 2968.

4 (Whereupon, the document above
5 referred to was marked defense exhibit
6 No. 2968 and received in evidence.)

7 MR. BLAKENEY: I propose to read from the
8 exhibit only the descriptions of the messages, the
9 times of filing, and the times of interception:

10 "No. 901 (pilot message), filed by the
11 Japanese 8:56 p.m., 6 December, Tokyo time, which
12 in Washington is 6:56 a.m., 6 December; intercepted
13 in Japanese code by Navy Station S (Bainbridge Island,
14 Washington) 1215-1220 GMT, 6 December, which is 7:15-
15 7:20 a.m., 6 December, Washington time.

16
17 "No. 902 (14 part memo), Part 1, filed by
18 the Japanese 10:00 p.m., 6 December, Tokyo time,
19 which is 8:00 a.m., 6 December, Washington time;
20 intercepted in Japanese code by Navy Station S
21 (Bainbridge Island, Washington) 1303-1310 GMT, 6
22 December, which is 8:03-8:10 a.m., 6 December,
23 Washington time.

24 "Part 13" of the 14 part memo, the intervening
25 parts being omitted, "filed by the Japanese 1:25 a.m.,
7 December, Tokyo time, which is 11:25 a.m., 6 December,

1 Washington time; intercepted in Japanese code by
2 Navy Station S, 1635-1652 GMT, 6 December, which is
3 11:35-11:52 a.m., 6 December, Washington time.

4 "Part 14, filed by the Japanese 4:38 p.m.,
5 7 December, Tokyo time, which is 2:38 a.m., 7 December,
6 Washington time; intercepted in Japanese code by Navy
7 Station S, 0805-0810 GMT, 7 December, which is 3:05-
8 3:10 a.m., 7 December, Washington time.

9 "No. 907 (one o'clock message), filed by the
10 Japanese 6:18 p.m., 7 December, Tokyo time, which is
11 4:18 a.m., 7 December, Washington time; intercepted
12 in Japanese code by Navy Station S (Bainbridge Island,
13 Washington) 0937 GMT, 7 December, which is 4:37 a.m.,
14 7 December, Washington time.

15 "No. 910 (code destruction), filed by the
16 Japanese 6:44 p.m., 7 December, Tokyo time, which is
17 4:44 a.m., 7 December, Washington time; intercepted
18 in Japanese code by Navy Station S (Bainbridge Island,
19 Washington) 1007 GMT, 7 December, which is 5:07 a.m.,
20 7 December, Washington time."

21 The exhibit last offered in evidence did not
22 disclose the time of decoding of these messages. As
23 evidence of the time required for decoding, typing
24 and preparation for distribution in this case by the
25 United States authorities I offer in evidence an

1 additional excerpt from "Pearl Harbor Attack," defense
2 document 1500-J-6.

3 THE PRESIDENT: Admitted on the usual terms.

4 CLERK OF THE COURT: Defense document
5 1500-J-6 will receive exhibit No. 2969.

6 (Whereupon, the document above
7 referred to was marked defense exhibit
8 No. 2969 and received in evidence.)

9 MR. BLAKENEY: From the exhibit I propose
10 to read only page 1 and a few entries from page 2.
11 Page 1 (Reading):

12 "Department of the Navy, Office of the
13 Secretary, Washington, 16 May 1946. 1083A (HLB)

14 "Memorandum to Mr. Seth W. Richardson.

15 "In compliance with the request of Vice
16 Chairman Cooper at page 10783 of the Record of
17 Proceedings, referred to in item 14 of your memorandum
18 of 29 March 1946, Captain Kramer has prepared, and
19 there is forwarded herewith, a smooth copy of the
20 study made by him of the times of delivery to the
21 White House of certain translations of Japanese
22 intercepts.

23 "John Ford Baccher, Commander, USNR."

24 From page 2 I shall read the following items,
25 taking the number in the left-hand margin, No. 42. I

1 omit the second column, "Origin," the date, the
2 translator, the page in the exhibit or transcript,
3 and come to the "Subject": "Re code machines, keep
4 one I meant."

5 The next item, No. 43: "Jap Note parts
6 1-13"; in the right-hand column, "Delivered by Navy,"
7 "Evening, 6 December."

8 The next item, No. 43 also, entitled: "Jap
9 Note part 14, delivered by Navy 0815-1000, 7 December."

10 Skipping to item 45: "1 P.M. message,"
11 delivered as were the following ones from 1030-1100,
12 7 December.

13 Item 47: "Destroy all codes and papers."

14 Item 49: "Pilot message," and

15 Item 50: "AP-UP reports re FDR message to
16 Emperor."

17 All of those last, I repeat, were delivered
18 from 1030-1100, 7 December.

19 I call as my next witness, Colonel Rufus
20 S. Bratton, United States Army, whose testimony is
21 contained in defense document 2094.
22

23 - - -
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1 R U F U S S. B R A T T O N, called as a witness
2 in behalf of the defense, first being duly
3 sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. BLAKENEY:

6 Q State your name, please.

7 A Rufus S. Bratton, Colonel, General Staff
8 Corps, United States Army.

9 Q I ask that you be handed defense document
10 2094 and that you examine that and state whether it
11 is your affidavit, signed and sworn to by you.

12 A It is.

13 Q Are the contents thereof true and correct?

14 A They are.

15 MR. BLAKENEY: I offer in evidence the
16 affidavit, defense document 2094.

17 THE PRESIDENT: Mr. Tavenner.

18 MR. TAVENNER: If the Tribunal please,
19 objection is made to this affidavit on the ground
20 that the matters contained therein are irrelevant
21 and immaterial to any issue in this case. The fact
22 that the United States may have correctly anticipated
23 what was likely to occur certainly is no justifica-
24 tion for the aggressive acts of these accused. The
25 fact that they may have been discovered in their

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1 efforts to deceive does not at all affect their
2 intent to deceive.

3 We think that the contents of the affi-
4 davit are objectionable on the same grounds as many
5 of those documents in the 1500 series were refused.

6 THE PRESIDENT: You are charging killings
7 as a result of treacherous surprise, is that so?

8 MR. TAVENNER: That is true.

9 THE PRESIDENT: Suppose you were not sur-
10 prised, but knew, which is the contention of the
11 defense, rightly or wrongly.

12 MR. TAVENNER: We take it, your Honor,
13 the fact that a person feels that he may be waylaid
14 in a dark alley does not at all alleviate the
15 character of the offense.

16 THE PRESIDENT: I think the answer is
17 shorter than that, Mr. Tavenner. You may have known
18 what was coming, but you did not know where or when.
19 In that way, this would not be an answer to a breach
20 of The Hague Convention of 1907.

21 Major Blakeney.

22 MR. BLAKENEY: I feel that this evidence
23 can be established as relevant on several grounds,
24 and in view of the fact that in my judgment it
25 raises squarely one of the fundamental questions for

1 decision by the Tribunal, I venture to hope that I
2 may be indulged in presenting my views rather fully.

3 First, because of its chronological place
4 in the order of proof, I should like to point out
5 the bearing of this evidence on the same chain of
6 proof which I have been attempting to forge with the
7 immediately preceding exhibits.

8 The Tribunal has received evidence of the
9 time of the dispatch, receipt, decoding and distri-
10 bution of the Japanese final message. Mr. Tavenner
11 says that those things will not be contested, but
12 that the prosecution will contend that there was a
13 deliberate arrangement to leave such a short time
14 as created a grave risk of mishap in the delivery
15 of this message by the Embassy. The evidence of
16 Colonel Bratton, viewed in this aspect, furnishes
17 the final link in the chain of showing the time
18 within which actually the message, intercepted,
19 decoded and prepared, was in the hands of a re-
20 cipient, rather than merely distributed in a void,
21 as it were. I said "a recipient" but I should have
22 said "recipients."

23 Also, on another point raised by the
24 President's discussion with Mr. Tavenner, we might
25 well readily agree with Mr. Tavenner's statement

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DIRECT

1 that in effect knowledge of intended treachery
2 does not palliate the performance of that
3 treachery, but Mr. Tavenner overlooks, I believe,
4 that in the end there is always the possibility
5 that this evidence will be regarded from the point
6 of view of the defense. Of course, if we accept
7 all the evidence in the case, with all the inferences
8 arising therefrom which the prosecution present,
9 this argument is quite sound. But to accept that
10 argument is to overlook that the defense has, before
11 now, offered evidence that no treachery was in fact
12 intended, and if we accept the evidence in the light
13 favorable to the defense, as of course we do in
14 presenting further evidence, we find the situation to
15 be somewhat different, somewhat like this -- that
16 these defendants had the honest intention of serving
17 a notice at a certain time. That intention was
18 frustrated and rendered nugatory by events outside
19 their control, and in such a state of affairs, I
20 submit, the fact of actual knowledge of that which
21 should, had the intention been carried out, have
22 been given notice of, must be very significant in
23 determining guilt or innocence for a treacherous
24 attack.
25

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1 It was suggested that substantial com-
2 pliance with the terms of The Hague Convention III
3 did not exist because knowledge was not shown of
4 time when and the place where hostilities would com-
5 mence, but I remind the Tribunal that quite aside
6 from the fact that The Hague Convention III con-
7 tains no requirement of a specification of time or
8 place, this witness will testify that the time of
9 the commencement of hostilities was known with con-
10 siderable certainty.

11 I have a good deal more to say.

12 THE PRESIDENT: We will recess until half-
13 past one.

14 (Whereupon, at 1200 a recess
15 was taken.)
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AFTERNOON SESSION

1
2 The Tribunal met, pursuant to recess, at
3 1330.

4 MARSHAL OF THE COURT: The International
5 Military Tribunal for the Far East is now resumed.
6

7 - - -

8 R U F U S S. B R A T T O N, called as a witness on
9 behalf of the defense, resumed the stand and
10 testified as follows:

11 THE PRESIDENT: Major Blakeney.

12 MR. BLAKENEY: I understand from Mr. Warren
13 that there was some matter which by agreement with
14 the Tribunal I believe was to have been brought up
15 at 1:30, but I assume we would all prefer not to be
16 interrupted in this present discussion.

17 THE PRESIDENT: I understand Colonel Warren
18 has an important matter to mention. I did suggest
19 1:30, but I did not anticipate we would be in this
20 position. We should not keep Colonel Bratton longer
21 than necessary.

22 MR. BLAKENEY: The remainder of my argument
23 is prepared for simultaneous delivery, I believe.

24 THE MONITOR: Yes.

25 MR. BLAKENEY: I said in opening my argument

1 that the objection to this evidence raises squarely
2 one of the fundamental questions for decision by
3 the Tribunal. The question -- whether the uncontro-
4 verted fact that the United States Government, in the
5 persons of all its highest military, naval, and
6 civilian officials, had certain knowledge of the
7 imminence of a war with Japan, and that many of them
8 had correct knowledge of the very hour at which the
9 hostilities would commence, can operate as a dispen-
10 sation from compliance by Japan with the requirement
11 of Hague Convention III for service of a declaration
12 of war -- I now wish to discuss from the narrow point
13 of view of treaty construction.

14 As the Tribunal is well aware, the scholiasts
15 and academicians explain this provision of the Con-
16 vention on two different grounds -- these grounds
17 being, incidentally, those two upon which different
18 groups of the delegates to the convention voted for
19 adoption of the provision. First of these reasonings,
20 and possibly the most widely adopted today, is that
21 the requirement of a declaration of war antecedent to
22 commencement of hostilities is designed to insure
23 against a nation's being made victim of a surprise
24 attack. But it seems plain that a nation which
25 expects war, which considers war waged by a known

1 adversary to be 'absolutely imminent' (to quote the
2 American Military authorities), which indeed knows
3 the very hour, within a margin of a few minutes, of
4 the opening of belligerent operations, cannot be said
5 to be taken by surprise when that war comes precisely
6 as it was anticipated that it would. To such a case
7 applies one of the best-known maxims of our law:
8 cessante ratione legis, cessat et ipso lex. Analo-
9 gies could be produced from other fields of law --
10 from the law of contracts, from the law merchant, for
11 example; but the strongest argument, in my submission,
12 is that the foul play, the treachery which on this
13 hypothesis this clause was intended to guard against
14 is simply not present, nor possible, in these cir-
15 cumstances.

16 If, on the other hand, as many assert -- and
17 as the debates over its adoption show was the view
18 of many of the contracting nations -- the provision
19 in question is not at all concerned with forestalling
20 surprise, but is a 'technical' or 'formal' rule,
21 designed chiefly to aid in establishing the precise
22 moment of commencement of war and in securing the
23 rights and duties of neutrals, then how much the less
24 shall it be accounted an offense vis-a-vis the fully
25 forewarned enemy that the formality be not complied

1 with! When the Hague Convention provides no minimum
2 time which must elapse between notification and hos-
3 tilities; when it leaves it available to the belliger-
4 ent to serve the one and follow it a minute later
5 with the other; when it so patently has neither in-
6 tention nor tendency to guard against surprise; how
7 shall it be accounted a crime or even a delinquency
8 if the provision be violated, and that through in-
9 advertence? It shall not be, in the view of leading
10 authorities, even in the absence of the actual notice
11 which we have here.

12 It is thus submitted that whether the matter
13 be viewed formally or from the consideration of its
14 true substance, the existence of actual notice must
15 be deemed to work a dispensation from the requirement
16 of the convention.

17 A point already mentioned may be slightly
18 elaborated. The testimony of Colonel Bratton will
19 additionally be evidence for the Tribunal on the
20 point of whether the Japanese Embassy in Washington
21 was given ample time by the Foreign Ministry for
22 preparation and distribution of the final message.
23 His testimony is clear that the message came in ample
24 time to the War Department -- that, in fact, the
25 entirety of it, as well as the instruction when to

1 deliver it, was in the hands of the War Department a
2 full four hours before the time set for delivery.
3 Clearly in these circumstances the United States had
4 far more notice than if the notification had been
5 delivered to it, as scheduled, at 1 P. M. and it had
6 then first had knowledge of it; not to speak of the
7 cases if, as is universally recognized to be per-
8 missible under the Hague Convention, Japan had
9 elected to and had successfully served the final
10 notification one or two minutes prior to the com-
11 mencement of hostilities.

12 Last, and in my judgment a decisive ground
13 on which this evidence is relevant is one which by
14 chance arose from a question put to a witness yester-
15 day by the President of the Tribunal -- the question
16 of interpretation of the final Japanese memorandum.
17 Since the Tribunal itself raised the point, a simple
18 statement without elaborate argument should suffice
19 to it. It will, of course, be an issue whether that
20 final memorandum as drafted and delivered (though
21 late) does constitute a declaration of war. The
22 Tribunal has heard testimony that the members of the
23 Liaison Conference who passed on it considered it
24 clearly to amount, in the circumstances then pre-
25 vailing, to a declaration of war.

1 In determining this question of interpre-
2 tation it cannot fail to be of assistance to the
3 Tribunal to know that the same interpretation was
4 arrived at by the responsible American authorities
5 familiar with and concerned in the matter. Here is
6 a form of the familiar interpretation by the parties.
7 Thus Colonel Bratton's testimony is relevant on this
8 further ground, that it will disclose that high
9 American authorities placed upon the Japanese memo-
10 randum the same interpretation as did the partici-
11 pants in the Liaison Conference, that it could be
12 and was nothing but a declaration of war.

13 On all these grounds I therefore submit
14 that this evidence should be received by the Tribunal.

15 THE PRESIDENT: The question to which you
16 refer was put by me at the request of another Member
17 of the Tribunal. You must not conclude that this
18 question was put by the Tribunal, that is to say,
19 by the majority of the Members. It was not. If a
20 Judge asks me to put a question I do so.

21 MR. BLAKENEY: I didn't mean in any way to
22 challenge the propriety of its being so done; I meant
23 it merely as an illustration that the point should be
24 readily understood.

25 THE PRESIDENT: By a majority the objection

1 is overruled and the document admitted on the usual
2 terms.

3 CLERK OF THE COURT: Defense document
4 2094 will receive exhibit No. 2970.

5 (Whereupon, the document above
6 referred to was marked defense exhibit
7 No. 2970 and received in evidence.)

8 MR. BLAKENEY: I request leave of the
9 Tribunal to read myself the questions and have Colonel
10 Bratton read the answers, the affidavit being in ques-
11 tion and answer form. May I do so?

12 THE PRESIDENT: I see no reason why the
13 usual practice should be departed from. We expect you
14 to read both question and answer.

15 MR. BLAKENEY: Very well.

16 I read the affidavit, which, omitting formal
17 parts, is as follows:

18 "Q What is your name?

19 "A Rufus S. Bratton, Colonel, United States Army.

20 "Q What is your present position?

21 "A Deputy Chief of CIS, G-2, GHQ, SCAP.

22 "Q What was your position in the month of
23 December 1941?

24 "A Chief of the Far Eastern Section, Military
25 Intelligence Division, War Department General Staff,

Washington, D. C.

1 "Q What, in general, were your duties at that
2 time?

3 "A I supervised the work of the Far Eastern
4 Section of the Military Intelligence Division, and
5 specifically was the custodian and processor of the
6 Japanese diplomatic messages which were being inter-
7 cepted and translated by the Army and the Navy. I
8 had charge of that material from the time it reached
9 the Military Intelligence Division.
10

11 "Q Was it your responsibility to make delivery
12 or dissemination of that intercepted diplomatic
13 correspondence?

14 "A It was my responsibility. I had some officer
15 assistants who helped me in processing the material
16 and occasionally in distributing it.

17 "Q When did you first learn that orders had
18 been issued to Japanese Embassies and consulates to
19 destroy their codes and documents?

20 "A On 3 December we had intercepted orders from
21 Tokyo to the Embassy to that effect, and I had sent
22 one of my officers to the Embassy and he reported
23 that they were burning their papers in the back yard.
24

25 "Q Whom did you notify of this fact?

"A General Sherman Miles, my superior officer

1 and Chief of Military Intelligence, and General
2 Leonard T. Gerow, Chief of the War Plans Division of
3 the General Staff. The intercepted message was sent
4 to the usual recipients of this material, which in-
5 cluded the Secretary of State and the Chief of Staff.
6 Distribution to the Secretary of the Navy and the
7 President was at that time the responsibility of the
8 Navy.

9 "Q Did you and Generals Miles and Gerow dis-
10 cuss the meaning of this destruction of codes?

11 "A Yes, we agreed that it meant at the least
12 a break in diplomatic relations and probably war.

13 "Q Do you remember the so-called pilot message,
14 which appears in evidence in this case as exhibit
15 1,216, and which I am having handed to you?

16 "A I do."

17 I am sure that he does.

18 THE PRESIDENT: That is why you asked for
19 that permission.

20 MR. BLAKENEY: Yes.
21
22
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25

1 "Q When did this message first come to your
2 attention?

3 "A Some time around 2 o'clock of the afternoon
4 of Saturday, 6 December 1941.

5 "Q Did you discuss the matter with anyone on
6 that Saturday afternoon?

7 "A Yes; with General Miles and with General
8 Gerow. In addition, that message was distributed to
9 the Chief of Staff, the Secretary of War and the
10 Secretary of State.

11 "Q Are you familiar with the 14-part message
12 which was later received in accordance with this pilot
13 message, in evidence here as exhibit 1245-K, which I
14 trust is being handed to you?"

15 I will give him a moment to look at that
16 long document.

17 "A I am.

18 "Q When did you first see any parts of this
19 message?
20

21 "A That message began to come into my office in
22 the late afternoon or early evening of 6 December, and
23 the first 13 parts had arrived completely between 9
24 and 10 o'clock that evening.

25 "Q To whom did you make distribution of those
13 parts?

1 "A To the Secretary of State, by delivery of
2 the locked pouch containing them to the night duty
3 officer in the State Department some time after 10
4 o'clock that night. I also advised General Miles by
5 telephone of the contents, and was told by him that he
6 had seen the 13 parts.

7 "Q When did you first see the 14th part of the
8 message?

9 "A The 14th part was delivered to me at my office
10 in the War Department 8:15 or 8:30 on the morning of
11 Sunday, 7 December.

12 "Q What distribution of it was made by you?

13 "A It was delivered immediately to the State
14 Department by me or my assistant, Colonel Dusenbury.

15 "Q When did you first see the message ordering
16 1 o'clock delivery of the memorandum contained in the
17 14-part message, exhibit 1218, which is being shown
18 to you?

19 "A At just about 9 o'clock of the morning of
20 7 December.

21 "Q Whom did you notify of receipt of this
22 message?

23 "A Generals Miles and Gerow, and General Marshall,
24 Chief of Staff.

25 "Q Do you know whether General Marshall had read

1 the 14-part message?

2 "A At 11:25 that morning Generals Miles and
3 Gerow and I met with General Marshall in his office.
4 He then read, in our presence, the complete 14-part
5 message and the 1 o'clock delivery message.

6 "Q Was the significance of the 1 o'clock delivery
7 discussed?

8 "A At General Marshall's request each of us gave
9 him his evaluation of it, which was that we concurred
10 in believing that it meant Japanese hostile action
11 against some American installation in the Pacific at
12 or shortly after 1 o'clock that afternoon.

13 "Q What did General Marshall do as a result of
14 this conversation?

15 "A He called Admiral Stark, Chief of Naval
16 Operations, on the telephone, and after consultation
17 with him wrote out in his own hand a warning message
18 to be sent to Hawaii, the Philippines, Panama and
19 other American outposts in the Pacific.

20 "Q I am having handed to you defense document
21 No. 1500-E-6. Please examine this document and state
22 whether it contains, on page 8" -- I make that
23 correction -- "on page 8, a copy of the message at
24 that time prepared and sent by General Marshall?
25

"A This is the message which General Marshall

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1 wrote and which at his order I took to the War Depart-
2 ment Message Center for coding and transmission."

3 And I now offer in evidence defense document
4 No. 1500-E-6.

5 THE PRESIDENT: Admitted on the usual terms.

6 CLERK OF THE COURT: Defense document
7 1500-E-6 will receive exhibit No. 2971.

8 (Whereupon, the document above
9 referred to was marked defense exhibit
10 No. 2971 and received in evidence.)

11 MR. BLAKENEY: And at this time I shall read
12 from page 8, commencing with the words:

13 "Memorandum for the Adjutant General (through
14 Secretary, General Staff).

15 "Subject: Far East Situation.

16 "The Secretary of War directs that the follow-
17 ing first priority secret radiogram be sent to the
18 Commanding General, U.S. Army Forces in the Far East;
19 Commanding General, Caribbean Defense Command; Command-
20 ing General, Hawaiian Department; Commanding General,
21 Fourth Army;

22 "And the message is this:

23 "Japanese are presenting at one p.m. Eastern
24 Standard time today what amounts to an ultimatum also
25 they are under orders to destroy their code machine

~~Immediately stop~~ Just what significance the hour set
1 may have we do not know but be on alert accordingly
2 stop Inform naval authorities of this communication.

3 "Marshall."

4 Returning to the affidavit, top of page 3:

5 "Q Were you advised by the chief of the message
6 center how long it would take for delivery of that
7 message to the addressees?

8 "A Colonel French, the chief of the message center,
9 told me that it would be in the hands of the addressees
10 within 30 or 40 minutes, which fact I reported to
11 General Marshall.

12 "Q What time was it then?

13 "A It was then 11:58 a.m."

14 You may cross-examine.

15 MR. TAVENNER: There will be no cross-
16 examination.

17 MR. BLAKENEY: I ask that the witness be
18 released on the usual terms.

19 THE PRESIDENT: He is released accordingly.

20 (Whereupon, the witness was excused.)

21 MR. BLAKENEY: As further evidence of the
22 time of delivery of the intercepted 14-part message
23 by the American Navy, I offer in evidence defense
24 document 1500-I-6, an excerpt from Pearl Harbor Attack.
25

1 I am sorry, I have departed from the order of proof.
2 I understand there is no objection.

3 THE PRESIDENT: Admitted on the usual terms.

4 CLERK OF THE COURT: Defense document
5 1500-I-6 will receive exhibit No. 2972.

6 (Whereupon, the document above
7 referred to was marked defense exhibit
8 No. 2972 and received in evidence.)

9 MR. BLAKENEY: I read the excerpt, which is
10 part of the testimony of Captain Laurence Frye Safford,
11 United States Navy, given before the Joint Congressional
12 Committee investigating the Pearl Harbor attack.

13 "All my shore duty has been spent in my
14 specialty as a cipher expert and radio intelligence
15 expert. I came ashore to assume this duty in charge
16 of the Navy Department Communications Intelligence
17 Unit in May 1936, and remained on that duty until
18 February 15, 1942, at which time I was removed by the
19 orders of Admiral Horne.
20

21

22 "I would like to make one statement which
23 may or may not be important, that the Navy completed
24 its distribution of that message, all 14 parts, plus
25 the pilot message, about 3 hours before the Japanese
Embassy in Washington called up the State Department

1 and asked for a delay in their appointment with
2 Secretary Hull because they were not ready."

3 As showing the advance knowledge of the
4 President of the United States of the contents of
5 the Japanese final memorandum, and that his interpre-
6 tation thereof from a perusal of the first 13 parts
7 only corresponded with that of the participants in
8 the Liaison Conference in Japan, defense document
9 1500-G-6, an excerpt from Pearl Harbor Attack, is
10 offered in evidence.

11 THE PRESIDENT: Mr. Tavenner.

12 MR. TAVENNER: If it please the Tribunal,
13 objection is made to the introduction of this document
14 in evidence on the ground that it is immaterial and
15 irrelevant.

16 THE PRESIDENT: Do you wish to say anything,
17 Major Blakeney?

18 MR. BLAKENEY: Yes, sir. I think that this
19 document and documents subsequently to be offered are
20 all squarely covered by the ruling on the testimony
21 of Colonel Bratton.

22 THE PRESIDENT: Yes, Mr. Tavenner?

23 MR. TAVENNER: If the vote has not been taken,
24 I would like to comment further.

25 THE PRESIDENT: Well, we do not allow you to

1 argue these points twice. Several seconds elapsed
2 between when you last spoke and Major Blakeney was
3 invited by me to talk if he wished. However, the
4 majority may desire to hear you, Mr. Tavenner. I
5 will take a vote.

6 MR. TAVENNER: I will not argue it further.

7 THE PRESIDENT: By a majority, the Court
8 overrules the objection and admits the document on
9 the usual terms.

10 CLERK OF THE COURT: Part 10 of the Pearl
11 Harbor Attack will receive exhibit No. 2973 for iden-
12 tification only. The excerpt therefrom, bearing
13 document No. 1500-G-6, will receive exhibit No. 2973-A.

14 (Whereupon, the document above
15 referred to was marked defense exhibit
16 No. 2973 for identification; and the ex-
17 cerpt therefrom, bearing document No.
18 1500-G-6, was marked defense exhibit
19 No. 2973-A and received in evidence.)

20 MR. BLAKENEY: I read the document:

21 "Mr. Richardson: Will you state your full
22 name, please?

23 "Commander Schulz: Lester Robert Schulz.

24

25 "Mr. Richardson: What was your assignment

1 for duty in Washington during the first week of
2 December?

3 "Commander Schulz: I was under instruction
4 in the Office of Naval Communications for communication
5 intelligence. That was my permanent assignment.
6 However, I was on temporary duty under verbal orders
7 at the White House as a communications assistant to
8 the Naval Aide, then Captain Beardall.

9

10 "Mr. Richardson: Were you on duty at the
11 White House in Admiral Beardall's office there on
12 the night of December 6, 1941?

13 "Commander Schulz: I was on duty in the
14 White House.

15

16 "Mr. Richardson: Do you recall Captain Kramer
17 coming to the White House on the evening of December 6
18 to deliver any papers?

19 "Commander Schulz: Yes, sir; I do.

20 "Mr. Richardson: About what time did he come?

21 "Commander Schulz: Between 9 and 10; I
22 should say about 9:30.
23

24

25 "Mr. Richardson: Are you able to state now
whether among the papers which were delivered to the

1 President there were this 13 parts of what was even-
2 tually the 14-part message?

3 "Commander Schulz: No, sir; I cannot. I
4 did not read the message. I have only learned of
5 its substance through information that has been di-
6 vulged during this inquiry, from newspapers and so on.

7 "Mr. Richardson: All right. Now, what
8 happened when you delivered these papers to the
9 President? You remained there?

10 "Commander Schulz: Yes, sir; I remained in
11 the room.

12 "Mr. Richardson: What happened?

13 "Commander Schulz: The President read the
14 papers, which took perhaps 10 minutes. Then he handed
15 them to Mr. Hopkins.

16

17 "Commander Schulz: Mr. Hopkins then read
18 the papers and handed them back to the President.
19 The President then turned toward Mr. Hopkins and said
20 in substance -- I am not sure of the exact words, but
21 in substance -- 'This means war.'

22 As bearing on the notice of impending war
23 given to high officials of the American State, War
24 and Navy departments, by interception of Japanese
25 messages directing destruction of codes, I offer in

1 evidence defense document 1500-C-6, an excerpt from
2 Pearl Harbor Attack.

3 THE PRESIDENT: Admitted on the usual terms.

4 CLERK OF THE COURT: Defense document
5 1500-C-6 will receive exhibit No. 2974.

6 (Whereupon, the document above
7 referred to was marked defense exhibit
8 No. 2974 and received in evidence.)
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1 MR. BLAKENEY: I read the document. First,
2 excerpts from:

3 "TESTIMONY OF SUMNER WELLES, FORMER UNDER
4 SECRETARY OF STATE.

5 "Senator Ferguson: When did you first hear
6 from any source that the Japanese Ambassadors in
7 various places, for instance, here in Washington and
8 in London, were destroying codes, or did you ever hear
9 of it?

10 "Mr. Welles: I recollect that shortly before
11 December 7th an intercept gave an indication that the
12 Japanese Embassy here was instructed to destroy its
13 papers.

14 "Senator Ferguson: Do you recall when that
15 was?

16 "Mr. Welles: Without referring to a record
17 I could not give you the precise day or time.

18 "Senator Ferguson: Was it prior to the 7th?

19 "Mr. Welles: Prior to the 7th.

20 "Senator Ferguson: What did that signify to
21 you as a diplomat and Under Secretary of State?

22 "Mr. Welles: That signified to me that the
23 last stage had been reached.

24 "Senator Ferguson: I did not catch that.

25 "Mr. Welles: That signified to me that the

1 last stage had been reached.

2 "Senator Ferguson: Would you say it indicated
3 war?

4 "Mr. Welles: A rupture of diplomatic re-
5 lations at the very least and under the circumstances
6 then existing the probability of war."

7 We come to the testimony of Major General
8 Sherman Miles, United States Army.

9 "Mr. Gesell (Chief Assistant Counsel):
10 General, will you state for the record your full name
11 and your present rank, and duty, please, sir?

12 "General Miles: Sherman Miles, Major General,
13 Army of the United States; stationed in Boston, Massa-
14 chusetts.

15 "Mr. Gesell: You were head of G-2, were you,
16 General, on December 7, 1941?

17 "General Miles: I was, sir.

18 "Mr. Gesell: How long have you had that duty?

19 "General Miles: I reported on May 1, 1940.

20 "Mr. Gesell: What, in a general way, would
21 you say are the duties and the functions of G-2?

22 "General Miles: The Military Intelligence
23 Division of the General Staff is charged with the
24 collection, analysis, estimation, dissemination of
25 information primarily for the Chief of Staff and the

1 Secretary of War.

2 "G-s is a staff officer of the Chief of Staff,
3 an assistant chief of staff for intelligence.

4 "Mr. Gesell: G-2 is another name for Mili-
5 tary Intelligence Division, is that correct?

6 "General Miles: Yes, sir.

7 "Mr. Gesell: May I ask you, General, what
8 significance could properly be attached at this time
9 to the number of messages which we had intercepted
10 from the Japanese in the period from December 1 to
11 December 5 and later indicating that the Japs were
12 destroying their most secret and confidential codes
13 in Washington and in fact throughout the world?

14 "General Miles: The inference would be that
15 the Japanese had either planned for the outbreak of
16 war, in other words, planned to initiate a war as they
17 did or feared war coming suddenly through what was
18 described in that message you recently read, a clash
19 of arms.

20 "Mr. Gesell: Therefore, the information con-
21 cerning code burning and destruction was of a specific
22 and vital military nature, was it not?

23 "General Miles: It was, sir.

24 - - -

25 "TESTIMONY OF ADMIRAL R. E. INGERSOLL, UNITED STATES NAVY

1 "Mr. Richardson (General Counsel): Admiral,
2 will you state your name to the reporter, please?

3 "Admiral Ingersoll: R. E. Ingersoll, Admiral,
4 U. S. Navy.

5 "Mr. Richardson: What was your assignment
6 during November and December 1941?

7 "Admiral Ingersoll: I was at that time
8 Assistant Chief of Naval Operations.

9 "Mr. Richardson: Your immediate superior was
10 Admiral Stark?

11 "Admiral Ingersoll: That is correct.

12 "Mr. Richardson: What were your duties
13 generally speaking in that assignment, Admiral?

14 "Admiral Ingersoll: The Assistant Chief of
15 Naval Operations had no duties assigned by law or by
16 Navy regulations. By Executive order he was a member
17 of the joint board which was the forerunner of the
18 joint chiefs of staff. By office regulations pre-
19 scribed by the Chief of Naval Operations he had in
20 general supervision of all officers of the Office of
21 Chief of Naval Operations. I had no original cogni-
22 zance of any manner. As a matter of fact I had no
23 office other than myself. And all heads of sections
24 took up their questions with me usually before present-
25 ing them to the Chief of Naval Operations.

1 "Once the Chief of Naval Operations had
2 established a policy, I endeavored then to relieve him
3 of all the load that I could of the details in carry-
4 ing out that policy, in signing papers and releasing
5 dispatches, I kept him informed of correspondence
6 where I thought there was something of which he
7 should be informed.

8 "I considered that the information which we
9 received regarding the destruction of the codes and
10 which was sent out to the fleets as one of the two
11 most important messages that were sent out by the
12 Chief of Naval Operations during the entire period
13 before Pearl Harbor, the other one being the dispatch
14 stating that, 'This is a war warning,' in effect and
15 that all hope of negotiations had broken off.

16 "Now, the wording in that winds message did
17 not say that we are going to be in a state of war or
18 that hostilities now exist. It referred to a rupture
19 of diplomatic negotiations or that the situation be-
20 tween the countries was becoming critical.

21 "The importance of the messages regarding
22 the destruction of the codes is this: If you rupture
23 diplomatic negotiations you do not necessarily have
24 to burn your codes. The diplomats go home and they
25 can pack up their codes with their dolls and take them

1 home. Also, when you rupture diplomatic negotiations
2 you do not rupture consular relations. The consuls
3 stay on.

4 "Now, in this particular set of dispatches
5 they not only told their diplomats in Washington and
6 London to burn their codes but they told their consuls
7 in Manila, in Hong Kong, Singapore, and Batavia to burn
8 their codes and that did not mean a rupture of diplo-
9 matic negotiations, it meant war, and that information
10 was sent out to the fleets as soon as we got it and
11 it made no difference whether we ever got an execute
12 from the winds after that or not, and that is why I
13 think officers in high positions are vague about it.
14 It did not make any difference.

15 "Mr. Gearhart (Representative from California):
16 Now the reason why you knew that the destruction of the
17 codes meant war and not merely breaking off of negoti-
18 ations was the fact that is they were merely breaking
19 off diplomatic negotiations with us they would not
20 have to destroy their codes?

21 "Admiral Ingersoll: Not necessarily.

22 "Mr. Gearhart: They could pack them up, as
23 you said with their second suit of clothes and take
24 them home if they were merely breaking off diplomatic
25 relations.

1 "Admiral Ingersoll: Correct.

2 "Mr. Gearhart: So that it was a dead tip-off,
3 a foregone conclusion in the estimations of the higher
4 ranking military officers that the order for the
5 destruction of their codes within our areas meant
6 nothing but war?

7 "Admiral Ingersoll: Yes; and the fact that
8 the consulates were included cinched it in my opinion
9 that it was war and not a rupture of diplomatic
10 negotiations or diplomatic relations.

11 "Senator Ferguson: But would you say that
12 all Navy men would come to the conclusion that the
13 moment that codes were going to be destroyed that that
14 meant war between the countries?

15 "Admiral Ingersoll: That was what we construed
16 it and I think everybody construed it, that it would
17 mean that.

18 "Senator Ferguson: All right. Now you know
19 of no one in the high command in the Navy that construed
20 the destruction of the codes in any other way than you
21 construed them?

22 "Admiral Ingersoll: I think everybody in the
23 Navy Department construed the destruction of the codes
24 as the fact that Japan expected to be at war shortly
25 with the three countries that were involved in that

1 series of messages.

2 "Senator Ferguson: Then we come to this con-
3 clusion, that at least on the 4th -- I think that is
4 the date they sent the messages out, was it not?

5 "Admiral Ingersoll: Third or fourth.

6 "Senator Ferguson: Third of fourth, that
7 everyone in the Navy, as far as the high command was
8 concerned, were alerted that war was going to occur
9 between America and Japan?

10 "Admiral Ingersoll: Those instructions were
11 sent to certain commanders, to the commanders of the
12 fleet, to the Naval attaches in Peiping and to the
13 Marine detachments and others and the purpose of send-
14 ing it to them was to inform them that we expected to
15 be at war -- or that Japan expected to be at war with
16 those countries in a very short time.

17 "Senator Ferguson: And our country was one
18 of them?

19 "Admiral Ingersoll: And our country was one
20 of them.

21 - - -

22
23 "TESTIMONY OF CAPTAIN ALWIN D. KRAMER, UNITED STATES NAVY

24 "Senator Ferguson:" I think that is, "I want
25 you to look at page 249, the top message from Tokyo to
Washington, December the 7, 1941, 'Extremely urgent.'

1 The other one was listed, 907, 'Urgent, very important,'
2 but this is, 'Extremely urgent,' and I will read it:
3 After deciphering part 14 of my #902^a and also #907^b,
4 908 and 909, please destroy at once the remaining
5 cipher machine --

6 "You will notice it says: the remaining
7 cipher machine and all machine codes. Dispose in
8 like manner also secret documents.

9 "Now, I will ask you when that message was
10 received and decoded.

11 "Captain Kramer: I cannot state, sir, from
12 first-hand knowledge when it was received and when it
13 was decoded. I do know that it was not received, or
14 at least seen by me, until about the middle of Sunday
15 morning.

16 "Senator Ferguson: Now, what hour would that
17 be?

18 "Captain Kramer: I believe that this partic-
19 ular one, 910, which you read, was seen by me first
20 when I returned from my appointment at the State De-
21 partment.

22 "Senator Ferguson: Do I understand that it
23 was seen at the same time as the 1 o'clock message?

24 "Captain Kramer: That is my recollection, sir.

25 "Senator Ferguson: Well, now I have information

1 here that a 910 and 907 -- 907 -- there are two short
2 messages I have just read -- was filed in Tokyo on
3 4:18 a.m. on the 7th of December. And it was inter-
4 cepted in Japanese code by the Navy station at Bain-
5 bridge Island, Washington, at 4:35 a.m.

6 "Captain Kramer: It says 4:37".

7 The remainder of the page should be oblit-
8 erated and is not a part of the document.

9 May I suggest that Mr. Warren present his
10 matter now.

11 THE PRESIDENT: Colonel Warren.

12 MR. WARREN: If the Tribunal please, we are
13 rapidly approaching the time when it will become
14 necessary to present the individual cases of the
15 accused, and the defense counsel have had a great deal
16 of discussion with reference to the accused taking the
17 witness stand. There is naturally more than one school
18 of thought, and while other counsel and their clients
19 are vitally interested in the proposition, it is not my
20 desire nor the desire of any of my co-counsel to bind
21 or in any manner limit the action of any other attorney
22 in behalf of his own client. Consequently, these re-
23 marks are directed in behalf of the accused HIRANUMA
24 and DOIHARA. After lengthy discussion, we have de-
25 cided upon a course of action which we believe will

1 meet all the requirements of the Tribunal and adequately
2 ly serve the ends of justice.

3 If the accused are presented as witnesses,
4 to testify in their own behalf, it will necessitate
5 the compiling of a lengthy and detailed affidavit in
6 behalf of each. We have, of course, rough drafts of
7 such statements, and are in a position at this time
8 to state authoritatively that if they are completed
9 and presented, that they will be lengthy and will
10 undoubtedly elicit a lengthy cross-examination.
11 Struggle as we may to shorten these documents, we
12 arrive at the inevitable obstacle of being unable to
13 determine what points might be lightly touched upon
14 and what points must be covered in great detail. This
15 situation is the natural result of the great mass of
16 testimony which has been placed before the Tribunal by
17 both the defense and the prosecution. We have no way
18 of knowing the points which the various Members of the
19 Tribunal may desire to have clarified. Not only is it
20 possible, but it is most probably that in compiling our
21 affidavits, we may touch sketchily or perhaps completely
22 overlook a matter of evidence which some Member of the
23 Tribunal needs most urgently in order to arrive at his
24 final judgment. For this reason we must, if we produce
25 an affidavit, cover in comprehensive detail all of the

1 testimony concerning our respective clients upon which
2 the prosecution has touched. From our viewpoint this
3 is not desirable and can only result in a tremendous
4 waste of time and effort, not only on the part of
5 counsel, but on the part of the Tribunal, and will
6 result in a considerable lengthening of the individual
7 cases.

8 It may seem far fetched, and indeed it is
9 entirely possible that I may be wrong. However, by
10 the elimination of affidavits and procedure in accord-
11 ance with the plan which I shall now outline, my
12 prognostication is that two-thirds of the time which
13 might be consumed in the presentation of the individ-
14 ual cases will be saved.

15 Section IV(b) of General Orders No. 20, which
16 is the Charter of this Tribunal, provides, under the
17 powers of the Tribunal, that the Tribunal has the
18 power, "to interrogate each accused and to permit
19 comment on his refusal to answer any question." We
20 interpret this provision to mean the Tribunal may
21 examine only if the accused voluntarily takes the
22 witness stand. Whatever the interpretation, it is,
23 of course, a departure from ordinary procedure in
24 criminal cases. Because it is a departure, in the
25 opinion of this counsel, it permits the Tribunal, with

1 complete propriety, especially upon the application
2 of counsel for guidance, to indicate its preference
3 with reference to the manner in which testimony may
4 be taken from the accused.

5 In our particular case it is our hope that
6 it would serve the purpose of the Tribunal if, after
7 presenting our individual cases in the ordinary manner,
8 we could, upon conclusion of our testimony, state in
9 substance to the Tribunal that we did not desire to
10 place the accused on the witness stand for direct
11 testimony, but had no objection to the Tribunal as a
12 whole, or any Member thereof, calling the accused to
13 the witness stand, under oath, and propounding to the
14 accused any question which might enable the Tribunal
15 to more speedily arrive at their judgment.

16 We do not believe there is any prohibition
17 under the terms of the Charter that would preclude us
18 from adopting this course of action, but our inter-
19 pretation of the provisions of the Charter may not be
20 in accord with that of the Tribunal. To adopt such a
21 course without first apprising the Tribunal of our
22 intention might react to the detriment of an accused
23 at a time when it would be too late to retrench and
24 bring his testimony before the Court by affidavit.
25 There is not the slightest desire on the part of either

1 of the accused to in any manner withhold any infor-
2 mation from the Tribunal which it may feel pertinent
3 to the issues. As a matter of fact, it is their desire
4 to wholeheartedly cooperate, but they are just as
5 anxious to adopt any time-saving device as any Member
6 of the Tribunal, the prosecution, or the defense.
7 They feel, as do we, that it would be humanly impos-
8 sible to develop an affidavit going directly to the
9 point which each Member of the Tribunal may want
10 clarified. They likewise feel that the Members of
11 the Tribunal, if given adequate notice of our inten-
12 tions, can be prepared to put their questions directly
13 to the accused at a great saving of time, and with the
14 elimination of any unnecessary details which undoubtedly
15 would become the subject of direct examination and
16 cross-examination, if an affidavit is used.

18 We realize that the Members of the Tribunal
19 might be reluctant to express an opinion as to their
20 preference on this question. As previously pointed out,
21 we feel that they may do so with the utmost propriety.
22 However, because of the fact that other accused and
23 their counsel may not see eye to eye with this counsel,
24 the Tribunal might, quite naturally, determine that it
25 should not express such a preference and in such in-
stance we would not presume to urge it so to do. If

1 the Tribunal can or will convey to us their approval
2 of the plan expressed, we shall be more than satis-
3 fied.

4 In order to fully clarify our position, we
5 should like to state that this matter is being pre-
6 sented to the Tribunal basically upon three premises:

7 1. We naturally do not desire to adopt any
8 course of action which might in any way reflect upon
9 the integrity of the accused.

10 2. We are firmly convinced that the Tribunal,
11 in the exercise of its prerogative to examine an
12 accused, can elicit from the accused the desired
13 information, much more expeditiously than either the
14 defense or the prosecution.

15 3. We are firmly convinced that it will un-
16 doubtedly save a great deal of time and effort for all
17 persons concerned.
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1 THE PRESIDENT: Mr. Chief of Counsel.

2 MR. KEENAN: The prosecution has not been
3 apprised of this application, if it has been called
4 such, but, of course, is anxious to cooperate in
5 any method that will avoid any unnecessary delay in
6 any part of this proceeding; and suggests that a copy
7 of the suggestion now advanced by Mr. Warren be
8 furnished the prosecution and an appropriate time be
9 given for study or any response that this Court may
10 think fitting and proper to such application.

11 MR. WARREN: If the Tribunal please, this is
12 not a matter that I formally notified the prosecution
13 about, because it is a question of a matter of procedure
14 upon which defense counsel alone is asking guidance.
15 However, I have a copy in my office which they may have,
16 but it will be completed and in the record in the
17 morning, and if they desire to study it and have any
18 comment to make, of course I have no objection to that.

19 THE PRESIDENT: Captain Brooks.

20 MR. BROOKS: If the Court please, I do not
21 believe this is going to be the final decision today
22 on this matter. As I understand it there will be a
23 further hearing and I would like to be heard at that
24 time, after discussion, as to the rights -- if such a
25 procedure is adopted -- that I might have as a defense

1 counsel for one of the other accused, to cross-
2 examine on a point that was raised to the Court
3 in a question. I believe that this matter goes
4 deeper than what appears on the surface. I do want
5 to reserve my rights until a future time, if the
6 Court will allow.

7 THE PRESIDENT: The Court has no intention
8 of giving a decision today, nor until after it has
9 heard this matter fully argued. I may hear it in
10 chambers, I think, and I believe now I have the **concurr-**
11 **ence** of all my colleagues that we will not undertake
12 to advise the accused what they should do. We will
13 decide what are their rights and obligations under
14 the Charter after hearing argument. We will adjourn
15 this matter to be argued later at a time to be fixed.

16 Major Blakeney.

17 MR. BLAKENEY: I return to exhibit 2971.

18 THE PRESIDENT: It has been suggested to me
19 that the prosecution might like to cross-examine the
20 witness YAMAMOTO. He has been in court or about the
21 court since half-past eleven.

22 MR. BLAKENEY: I have just discussed the
23 matter with Mr. Tavenner and we thought it is better
24 to commence at 3 o'clock.

25 Meanwhile, then, I shall return to exhibit

1 2971 to read further excerpts with a view to
2 clarifying the state of knowledge of General Miles,
3 G-2 and General Marshall, Chief of Staff, starting
4 at the beginning:

5 "TESTIMONY OF MAJOR GENERAL SHERMAN MILES

6 "Mr. Gesell: Now, just how far, General,
7 did this question of security go in this regard? To
8 take an extreme case, assuming you had intercepted a
9 message in which the Japanese said that they planned
10 to attack Pearl Harbor on the 7th of December at dawn.
11 I take it I am correct in assuming that that message
12 would have been transmitted to Hawaii for their infor-
13 mation?

14 "General Miles: It would have been, by the
15 Chief of Staff. I think that case is similar to the one
16 which actually occurred on the morning of December 7.
17 We didn't know where this attack was coming but we very
18 much feared an attack would come coincident with the
19 1 p.m. delivery of the Japanese reply and my action
20 then was to bring this to the notice of the Chief of
21 Staff so that an additional warning would be sent out.

22 "Mr. Gearhart: . . . But, General Miles, things
23 happened on the 6th of December which suddenly centered
24 your attention upon Hawaii as a possible object of
25 attack, did there not?

1 "General Miles: Things happened on the
2 morning of the 7th of December, sir, which centered
3 my attention on the probable Japanese attack some-
4 where coincident with the delivery of the Japanese
5 reply at 1 o'clock that day.

6 "Mr. Gearhart: You are familiar with the
7 so-called 14-part Japanese reply to the Hull message
8 of November 26, are you not?

9 "General Miles: I am, sir.

10 "Mr. Gearhart: When they speak of it as
11 the 14-part message they are referring to the method
12 the Japanese used in transmitting that message, are
13 they not?

14 "General Miles: That is correct, sir.

15 "Mr. Gearhart: It came in in installments,
16 in other words, rather than in a solid typed coded
17 message; is that correct?

18 "General Miles: That is correct, sir.

19 "Mr. Gearhart: Thirteen parts of that
20 message were received in Washington on the 6th day
21 of December, were they not?

22 "General Miles: On the late evening of the
23 6th they were received, sir.

24 "Mr. Gearhart: Do you know when the four-
25 teenth part was received on the 7th of December?

1 "General Miles: I understand that that
2 was received fairly early on the morning of the 7th,
3 at 7 or 8 o'clock. Again, I am not able to testify
4 as to the accurate hour.'

5 "Mr. Gearhart: You were impressed with the
6 importance of that fourteenth part of the message,
7 were you not?

8 "General Miles: When I read it, I was very
9 much impressed with the fourteenth part.

10 "Mr. Gearhart: Did you make any out-of-the-
11 ordinary directions in reference to its immediate deliv-
12 ery to the ones that were entitled to receive copies
13 from an emissary from your division?

14 "General Miles: It had been delivered to the
15 recipients about coincidental with its delivery to me,
16 with the exception of General Marshall with whom I was
17 in touch either directly or through Colonel Bratton to
18 get this information to him.

19 "Mr. Gearhart: Did you make any special effort,
20 by telephone or otherwise, or by calling at his office,
21 to inform General Marshall of the receipt of that
22 fourteenth part of the message?

23 "General Miles: I did, sir.

24 "Mr. Gearhart: Were you successful in con-
25 tacting him?

1 "General Miles: I was, sir.

2 "Mr. Gearhart: When did you inform him of
3 the fourteenth part of the message?

4 "General Miles: Mr. Congressman, I have
5 written notes on my activities on the 6th and 7th
6 which, perhaps for clarity and saving time, I might
7 read.

8 "My wife and I dined at the house of
9 Admiral Theodore Wilkinson, then Chief of ONI.
10 We were there from 8 p.m. until about 11 p.m.
11 Shortly before we left, I think about 10:30 p.m.,
12 Commander Kramer came to the house, bringing with
13 him a summary, I think, although it may have been
14 the full translation of the first 13 parts of the
15 Japanese reply to our note of November 26. This
16 was the first knowledge I had that these 13 parts
17 were in.

18 "Early on the morning of the 7th, Colonel
19 Bratton called me at my house, told me that
20 important information was in and that he was try-
21 ing to get in touch with General Marshall. I
22 asked Colonel Bratton to tell General Marshall
23 that I would come out to Fort Myer to see him if
24 he desired. Either Colonel Bratton or I called
25 General Gerow. These telephone messages were

1 designed to effect a meeting of the Chief of
2 Staff with General Gerow," it should be Colonel
3 Bratton, "and myself, which subsequently took
4 place in General Marshall's office.

5 "I then went to my office. There I saw
6 the full Japanese reply, and the 1 p.m. delivery
7 message, and discussed them with Colonel Bratton.
8 The latter message and the fourteenth part of the
9 Japanese reply struck me immediately.

10 "Soon arrangements had been made for us
11 to be notified when General Marshall arrived.
12 When so notified, I went to General Marshall's
13 office. What took place in his office is best
14 recalled by me in a memorandum I prepared for the
15 Chief of Staff, dated December 15, 1941, subject:
16 'Sunday Morning, December 7, 1941.'

17 "This is the memorandum that I refer to, as
18 my recollection of what occurred.

19 "Memorandum for the Chief of Staff

20 "Subject: Sunday morning, December 7, 1941.

21 "1. My recollection of what occurred in your
22 office on that morning is as follows:

23 "I found you alone in your office at about
24 11:25 a.m. We were almost immediately joined by
25 Colonel Bratton , who brought in the Japanese reply

1 and the Japanese directive that the reply be given to
2 Secretary Hull at 1 p.m. that day.

3 "You then read aloud the Japanese reply, which
4 was of considerable length. You then asked what
5 Colonel Bratton and I thought should be done about it,
6 or what it signified. We said that we believed there
7 was important significance in the time of the delivery
8 of the reply-- 1 p.m.-- an indication that some military
9 action would be undertaken by the Japanese at that
10 time. We thought it probable that the Japanese line
11 of action would be into Thailand, but it might be any
12 one or more of a number of other areas.

13 "I urged that the Philippines, Hawaii, Panama
14 and the West Coast be informed immediately that the
15 Japanese reply would be delivered at one o'clock that
16 afternoon, and to be on the alert. You then picked up
17 the telephone and got Admiral Stark. You told him you
18 thought we should send out warning as indicated above.
19 After Admiral Stark replied, you put down the telephone
20 and said that the Admiral did not think any further
21 warnings necessary, since all the forces had already
22 been several times alerted. Colonel Bratton and I
23 nevertheless urged that warnings be sent.

24 "You then wrote out the warnings message.
25 There was some discussion as to whether the Philippines

1 should be included or not, but I am not quite clear
2 exactly when this discussion occurred. You again got
3 Admiral Stark on the telephone and read the message
4 to him. He apparently concurred, and asked that the
5 naval forces be informed. You added that at the
6 bottom of the message.

7 "At about this time General Gerow and Colonel
8 Bundy arrived. You asked us in succession, beginning
9 with me, what we thought the Japanese reply and timing
10 meant. I said that I thought it probably meant Thailand,
11 but that the timing had some significance and warning
12 messages should be sent. General Gerow and Colonels
13 Bratton and Bundy concurred. The message in your hand-
14 writing was then given to Colonel Bratton to take
15 immediately to the message center. (There was a little
16 discussion here as to whether it should go to General
17 Gerow's office for typing first, but time was then press-
18 ing and I gave it to Bratton for immediate delivery.
19 General Gerow said as Bratton was leaving, 'Tell them to
20 give it first priority to the Philippines if there is a
21 question of priority' or something to that effect.)
22 Bratton returned in a few moments and you directed him
23 to find out how long it would take for the delivery
24 of those messages. Again he went to the message center
25 and returned and reported to you that they would have

1 them encoded in three minutes, on the air in eight,
2 and in the hands of the recipients in (I think) twenty.

3 "Colonel Bratton states that he looked at his
4 watch on delivering your message to the Signal Corps,
5 and the time was 11:50 a.m. He further states that the
6 message center gave him no intimation that all four
7 messages would not go over Army radio direct to the
8 four Army Headquarters.

9 "Signed by me

10 "Mr. Gearhart: Do you remember when you first
11 saw the full message of the 14 parts?

12 "General Miles: I cannot identify the hour
13 exactly, sir. I only know that I got down there to the
14 office fairly early after this telephone conversation
15 with Colonel Bratton, and I think that General Gerow,
16 although of that I am not quite certain, and that I
17 had considerable time to read the message and discuss
18 it with Colonel Bratton before the arrival of the Chief
19 of Staff.

20 "Mr. Gearhart: But the very use of 1 o'clock
21 by the Japanese Government in directing their Ambassador
22 and Envoy to present that at that hour certainly excited
23 in the minds of every officer who saw that message
24 much comment in respect to its possible meaning, did
25 it not?

1 "General Miles: Yes, sir, It was a very
2 unusual request to make on a Secretary of State of
3 a foreign power, that he receive a message at 1 o'clock
4 on a Sunday afternoon."

5 Mr. Tavenner advises me that the next two
6 paragraphs have been inverted. I therefore read them
7 in reverse order.

8 "General Miles: I am trying to remember, Mr.
9 Congressman but I do not remember that any of those places
10 specifically were discussed, or that we related the 1
11 o'clock in Washington to any specific place. We
12 thought the line of action would be Thailand, still
13 thought it that morning, but we wanted our overseas
14 departments and the west coast alerted, and it was an
15 awful urgency about it.

16 "Mr. Gearhart: All right. What did 1 o'clock
17 in Washington mean in Hawaii?"

18 Then, on the top of page five:

19 "General Miles: One o'clock, as we now know,
20 meant about 7 o'clock, I think, in Hawaii."

21 Now, at this point, Mr. Tavenner has asked
22 me, and I have consented, to read an additional excerpt
23 of three sentences which we would like to have at this
24 point.

25 "Mr. Gearhart: And isn't it true that the

1 opinion among those with whom you were in consultation
2 was unanimous that it meant trouble in Hawaii?

3 "General Miles: No, sir, I have no such
4 recollection."

5 Then, I return to the exhibit.

6 THE PRESIDENT: We will recess for fifteen
7 minutes.

8 (Whereupon, at 1445, a recess was
9 taken until 1505, after which the proceedings
10 were resumed as follows:)

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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: Mr. Tavenner.

4 MR. TAVENNER: If the Tribunal please, I
5 would like to recall at this time the witness YAMA-
6 MOTO Kumaichi for further cross-examination.

7 K U M A I C H I Y A M A M O T O, resumed the stand
8 and testified through Japanese interpreters as
9 follows:
10

11 THE PRESIDENT: You are still on oath.

12 CROSS-EXAMINATION

13 BY MR. TAVENNER (Continued):

14 Q Mr. YAMAMOTO, as is shown on page 26,134 of
15 the transcript, you volunteered this information yes-
16 terday: that on the 2nd of December, 1941, at a
17 Liaison Conference, the Vice-Chief of the Naval
18 General Staff, Vice-Admiral ITO, representing the
19 naval branch of the High Command, made a very strong
20 request that in view of the necessity of conducting
21 a surprise attack and inflicting heavy damages upon
22 the enemy at the onset of the opening of hostilities,
23 the Naval High Command would like to have the Japanese-
24 American negotiations left alone and unruptured up
25 to the time of the opening of hostilities.

What conversation or discussion did you have

1 on that subject either within the Foreign Ministry
2 or without prior to the 2nd day of December, the
3 date of this Liaison Conference?

4 A In regard to the notification -- In regard
5 to the final notification to be sent to America, even
6 before the Liaison Conference of December 2, in talks
7 with Foreign Minister TOGO in the Foreign Office
8 the Foreign Office as a whole was of the opinion that
9 this matter should be handled in the regular manner,
10 that the regular forms be preserved in sending such
11 notification.

12 Q You evidently misunderstood my question.
13 I am not asking you about the time of sending of the
14 notification; I am asking you about the position that
15 the Vice-Chief of the Naval General Staff took with
16 regard to holding open negotiations until hostilities
17 begin.

18 THE PRESIDENT: There are interruptions in
19 the Japanese, and I am sure he is not hearing the
20 translation of what you are saying, not all of it.

21 MR. TAVENNER: If your Honor please, I have
22 been informed that the witness understands English.

23 THE PRESIDENT: Mr. Brannon.

24 MR. BRANNON: We assume that the prosecution
25 has a basis for interrogating this witness again on

1 the same point that they could have yesterday. We
2 are withholding objection, relying upon their sin-
3 cerity in bringing in new matter, matter that wasn't
4 available yesterday.

5 THE PRESIDENT: It is too early to say
6 they are not relying on something they have dis-
7 covered since.

8 BY MR. TAVENNER:

9 Q Do you understand the question, Mr. YAMAMOTO?

10 A May I understand your last question to be one
11 directed to the question of whether previous conver-
12 sations were held between the Foreign Office and Vice-
13 Admiral ITO?

14 Q I asked you if you had any discussion or
15 conversation within the Foreign Ministry or without
16 the Foreign Ministry on this subject prior to the
17 Liaison Conference of December 2.

18 A I am still not quite clear as to just what
19 your question means. If your question is directed to
20 the question of whether we discussed within or with-
21 out the Foreign Office the position of Admiral ITO,
22 I must reply, as I did previously, that the Foreign
23 Office was of the opinion that we should take the
24 regular steps prescribed by international law. But
25 if you are asking whether I had any talk with Vice-

1 Admiral ITO about the matter, I had no talks with
2 him up until December 2 on this matter at all.

3 Q I don't see how there could be any uncer-
4 tainty about my question, Mr. YAMAMOTO. It is plain-
5 ly this:

6 Did you have a conversation within or without
7 the Foreign Ministry prior to December 2, the date of
8 the Liaison Conference, regarding the holding open of
9 negotiations until hostilities begin?

10 THE PRESIDENT: If I am hearing the Japanese
11 as he is hearing it, then he is not hearing all you
12 are putting to him; but there may be something wrong
13 with my part of the IBM.

14 BY MR. TAVENNER:

15 Q Am I speaking too rapidly?

16 THE PRESIDENT: You are not, but this machine
17 is out of order as far as this section is concerned.
18 I can't speak for his line.

19 Q Do you understand now, Mr. YAMAMOTO?

20 A I understand.

21 Q Please answer.

22 A The question of whether negotiations should
23 be continued on it up until the opening of hostilities
24 was discussed in the Foreign Office prior to December
25 2.

1 THE PRESIDENT: I didn't hear his answer.
2 I heard "hos." I suppose it is part of the word "hos-
3 tilities." That is all I heard.

4 MR. TAVENNER: I think it must be your Honor's
5 earphones.

6 Will you please repeat the answer the witness
7 gave?

8 (Whereupon, the last answer was read
9 by the official court reporter.)

10 THE WITNESS: Even after the decision to open
11 hostilities, which was made on December 1, the Foreign
12 Office continued to hope that negotiations could be
13 concluded on the basis of asking America to reflect.
14 Concerning this matter, a telegram was sent -- instruc-
15 tions were sent on December 28 from Foreign Minister
16 TOGO to Ambassador NOMURA.
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1 Q When did the Foreign Ministry abandon
2 its idea of attempting to conduct negotiations
3 in a bona fide manner?

4 A Right up until the opening of hostilities
5 the Foreign Office had hope for a reflection on
6 America's part, and had hope for a solution of the
7 situation; but the final notification delivered to
8 the American Government on December 7th showed
9 that Japan had finally given up this hope, and
10 the Foreign Office in particular.

11 MR. TAVENNER: I desire to call to the
12 Tribunal's attention that in answer to the previous
13 question it was announced that the date was "Decem-
14 ber 28th"; I am confident that the witness said
15 "November 28th".

16 Q Is that correct?

17 A November 28th.

18 Q Now, how many conferences were held prior
19 to December 2nd regarding this matter of breaking
20 off negotiations?

21 A Within the Foreign Office this problem
22 was discussed almost every day.

23 Q With what other groups, such as the High
24 Command, was this matter discussed before the 2nd
25 day of December?

1 Q When did the Foreign Ministry abandon
2 its idea of attempting to conduct negotiations
3 in a bona fide manner?

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6 America's part, and had hope for a solution of the
7 situation; but the final notification delivered to
8 the American Government on December 7th showed
9 that Japan had finally given up this hope, and
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11 MR. TAVENNER: I desire to call to the
12 Tribunal's attention that in answer to the previous
13 question it was announced that the date was "Decem-
14 ber 28th"; I am confident that the witness said
15 "November 28th".

16 Q Is that correct?

17 A November 28th.

18 Q Now, how many conferences were held prior
19 to December 2nd regarding this matter of breaking
20 off negotiations?

21 A Within the Foreign Office this problem
22 was discussed almost every day.

23 Q With what other groups, such as the High
24 Command, was this matter discussed before the 2nd
25 day of December?

1 A It goes without saying that we held confer-
2 ences within the Foreign Office daily, but we also
3 were in continual touch with high army and navy
4 officials and all other officials who were connect-
5 ed with this matter.

6 Q Isn't it true that the Foreign Ministry
7 and the High Command, or the Army and the Navy, were
8 united in their opinion prior to December 2nd that
9 the negotiations should be held open until hostil-
10 ities began?

11 A When you say our opinion that negotiations
12 should be continued up to the beginning of the
13 hostilities, my interpretation is that negotiations
14 should be continued right up until delivery of the
15 final notification, which was decided on at the
16 Liaison Conference on December 2nd.

17 Q Then your statement that Vice-Admiral Ito
18 made a strong request that in view of the necessity
19 of a surprise attack and inflicting heavy damages
20 upon the enemy at the outset of the opening of
21 hostilities, required keeping the negotiations
22 open, was the view of the Ministry as well as the
23 Navy, was it not?

24 A In your last question I understood you to
25 refer to Vice-Admiral Ito's opinion as being not

1 only that of the High Command, but also that of
2 the Foreign Ministry, is that correct?

3 Q Is that not a fact?

4 A That was not the opinion of the Foreign
5 Office at all. That was the opinion of the Navy
6 High Command.

7 Q Now did you not telephone to Ambassador
8 KURUSU in the United States, asking him to hold
9 the negotiations open?

10 A That is a fact.

11 Q And was that not done with the real inten-
12 tion of holding the United States off by continuing
13 to talk peace, while preparing to attack?

14 THE PRESIDENT: Mr. Blakeney.

15 MR. BLAKENEY: I should like to point out
16 that counsel this morning mentioned a fifteen-
17 minute cross examination. As yet, 30 minutes have
18 produced no new material whatever. I object to
19 continuing this line of cross-examination, which
20 could have been done yesterday, and in large measure
21 was conducted yesterday.

22 MR. TAVENNER: It is not my fault, your
23 Honor, that the witness evades the questions.

24 MR. BLAKENEY: That is not the point. The
25 questions contain no suggestions of new matter as yet.

1 THE PRESIDENT: Well, we expect these ques-
2 tions to lead to some new matter. We do not suppose
3 for one moment that he would be so foolish as to
4 disclose it instantly if circumstances require
5 otherwise. That would destroy the element of
6 surprise.

7 Q Now, after this objection, are you pre-
8 pared to answer the question?

9 A I replied to your question that that was
10 a fact.

11 Q Now what was the first occasion for a
12 conference in which it was decided that negotia-
13 tions would be kept open to give Japan an oppor-
14 tunity to conduct a surprise attack?

15 A No decision that Japan was to continue
16 the negotiations until the surprise attack was
17 ever arrived at in any conference held at any
18 time.

19 At the Liaison Conference of December 2
20 the Vice-Chief of the Naval General Staff did
21 voice an opinion to that effect, but this opinion
22 was immediately countered by Foreign Minister
23 TOGO's words, and as a result it was decided that
24 a final notification would be sent to America be-
25 fore the outbreak of hostilities.

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1 Q Now, in view of your statement that there
2 was no understanding prior to December 2 or at any
3 other time that negotiations would be held open to
4 give Japan an opportunity to make a surprise attack
5 I would like to present you prosecution document
6 3134-A and ask you if you can identify it. Do you
7 identify that document?

8 A Will you wait a moment, please?

9 I do recollect this document. This was
10 never adopted in the Foreign Office. This is a
11 mere research draft proposal -- a draft proposal for
12 reference purposes. The basic thought underlying
13 this document was that the negotiations would have
14 to be stopped, would have to be dropped one time or
15 another and when that rupture of negotiations came
16 about appropriate measures would be taken and was
17 thus peaceful in nature.

18 THE MONITOR: The basic nature of this
19 document, however, was that although it could not be
20 expected that the negotiations would come to a peace-
21 ful or successful end and that there would come a
22 time when the rupture of negotiations would become
23 necessary, it was on the premise that the appro-
24 priate measure would be taken regarding the breaking
25 off of the relation. Thus with the basic idea of

1 that nature this was a peaceful idea and in accord-
2 ance with international law.

3 MR. TAVENNER: As you have identified the
4 document I desire to offer it in evidence on behalf
5 of the prosecution.

6 Will you distribute typewritten copies to
7 the Members of the Tribunal?

8 MR. BLAKENEY: I object to the reception
9 of the document on the grounds that the witness has
10 not identified it but has merely said that he has
11 seen it before and has attempted to explain its
12 nature. He is not connected with it, or anyone or
13 any organization.

14 THE PRESIDENT: He seemed to identify it
15 readily and I did not understand him to be speaking
16 from the face of the document but from what he knew
17 about it independently.

18 MR. BLAKENEY: And in any event, of course,
19 I wish to reserve the right to make any further
20 objections after having had opportunity to examine
21 the document.

22 MR. TAVENNER: You will note at the top of
23 the document a--
24

25 THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Prosecution document

3134-A will receive exhibit No. 2975.

(Whereupon, the document above referred to was marked prosecution exhibit No. 2975 and received in evidence.)

Q You will note at the top of this document a seal. Is that the state secret seal? Hand him the original.

A Yes.

Q Is that the highest type of secret seal that there is?

A Yes.

Q It is the seal of the Japanese government?

A Yes.

Q Was it prepared by you?

A I acknowledge that this was a draft proposal for reference purposes, drafted by my subordinates and presented to me. No decision on this was ever reached. It is not a proposal on which a decision was reached.

Q And are the interlineations in your handwriting?

A The penciled notes are in my handwriting.

MR. TAVENNER: I will read the document and I desire to call to the Tribunal's attention that there appears in the original an interlineation and

1 also a line which has been struck out and a substi-
2 tution made for it. The translator's note on the
3 second page of the copy which I have handed the
4 Members of the Tribunal explains that situation.

5 I will read the document both with and
6 without the interlineations and both with and without
7 the line that was struck out:

8 "Outline of Future Diplomatic Measures

9 "Vis-a the United States

10 "State Secret

11 "It is clear that the contents of the
12 new United States proposal dated 26 November are
13 completely unacceptable nor can we longer recognize
14 any signs whatsoever of sincerity in the attitude of
15 the United States towards the present negotiations.
16 Such being the case, although it will be necessary
17 to break off the negotiations at a proper time"--
18 now reading without the interlineation -- "for the
19 time being we should continue the negotiations under
20 the following policy so as to facilitate the execution
21 of our own future plans."

22 This last sentence read with the interlineation
23 is as follows:

24 "Such being the case, although it will be
25 necessary to break off the negotiations at a proper

1 time, we should make it our main object for the
2 time being to strictly guard lest the real intentions
3 of the Empire be perceived. We should continue the
4 negotiations under the following policy so as to
5 facilitate the execution of our own future plans:

6 "1. Have Ambassadors NOMURA and KURUSU
7 state that regarding the new proposals of the United
8 States they have asked for and are awaiting instruc-
9 tions from the central authorities and that upon
10 receipt of such instructions a reply will be forth-
11 coming."

12 The next sentence as it formerly read before
13 a part of it was struck out is as follows:

14 "But for the time being have the two
15 Ambassadors, as though it were their own opinion,
16 continue the negotiations with the United States
17 with the same opinion as has been expressed hitherto
18 in regard to the basic plan."

19 The sentence as reconstructed with an inter-
20 lineation is as follows:

21 "But for the time being have them continue
22 the negotiations with sincerity, asking numerous
23 questions on the various points noted here separately.

24 "2. To the United States proposal of 26
25 November an answer to the following effect shall be

issued at a proper time:

1 "(a) As the United States plan is
2 opposed to the past basic claims of Japan it cannot
3 be made the basis for further negotiations.

4 "(b) There is no room for further consider-
5 ation on our part beyond the proposals of 25 September
6 and 20 November.

7 "(c) We call upon the United States for
8 still further reconsideration.

9 "NOTES: (1) The contents of our reply
10 should bring out the sincerity of the Empire and her
11 just claims, and at the same time due consideration
12 should be paid to the time when the reply is made
13 public at some future date.

14 "(2) In this answer we should"-- and here
15 is inserted an interlineation -- "use phraseology
16 which will"-- (that ends the interlineation) -- "put
17 the responsibility for future success or failure on
18 the United States, and, furthermore, should take care
19 not to create the impression of a break off of
20 negotiations."
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1 Q Now, Mr. YAMAMOTO, you state that that is
2 a work draft?

3 A Yes, I did.

4 Q Is it not in fact the basic decision upon
5 which you acted, beginning with your telephone call
6 to Ambassador KURUSU?

7 A I do not recollect whether this document
8 was drawn up before or after my telephone conversa-
9 tion with Ambassador KURUSU. The reason why I asked
10 Ambassador KURUSU to continue negotiations was that
11 at that time no decision had been reached as to
12 whether to continue the negotiations or to break
13 them off and to start war. Up until that moment,
14 every instruction I had received from my superiors
15 indicated that I was to bend all my efforts to
16 arrive, to successfully conclude the negotiations
17 right up until the final moment. I talked with
18 Ambassador KURUSU on the telephone only on the basis
19 of those instructions.

20 Q Is not that draft which has been introduced
21 in evidence also the basic reason for your telegram
22 of November 28, in which you asked the Ambassador
23 to continue with the negotiations?

24 A The instructions sent on the 28th November
25 had to do in main with an appeal to America to

1 reconsider. We felt that if America would reconsider
2 and to a certain extent agree to our proposals, a
3 basis for future negotiations would be laid -- for
4 the continuation of the negotiations would be laid.

5 Q Did you not, in fact, prepare the note that
6 was ultimately delivered in pursuance to the matters
7 appearing in paragraph two in this document?

8 A What do you mean by final facts and final
9 note?

10 Q The final note which you admitted yester-
11 day you prepared, the one with fourteen parts.

12 A As regards this final note, I had the
13 primal responsibility in drawing it up but in the
14 actual drawing up of the note consultations were
15 held with all officials concerned and at the end the
16 note itself received the approval of the Liaison
17 Conference.

18 Q But was not that note in compliance with
19 the matter set forth in paragraph two in this docu-
20 ment?

21 A That document was drawn up before the
22 final decision to go to war, and therefore there are
23 portions of that document which may be similar to
24 the contents of the final note, while there are other
25 portions which are not.

1 Q As a matter of fact, this is titled "An
2 Outline of Future Diplomatic Measures," and were
3 not the future diplomatic measures actually taken
4 in accordance with this draft?

5 A To begin with, that document sets forth
6 the premise that future negotiations would be futile
7 and it is written on that assumption. Therefore,
8 probably in the near future matters would come to
9 such a state that negotiations would have to be
10 broken off, but until then negotiations would be
11 continued. That was the purport of that document.

12 Q Now, in your own handwriting, there appears
13 in that document, this language: "We should make it
14 our main object to strictly guard lest the real
15 intentions of the Empire be perceived."
16

17 Do you recall that that appeared in your
18 own handwriting in that document?

19 A I do, but the meaning of that sentence
20 is as follows: that we did not want our opponents
21 to find out the fact that we did not believe the
22 negotiations capable of a successful conclusion.

23 Q And you also wanted the United States to
24 believe that negotiations were being conducted in
25 good faith when they were not, did you not?

 A In the actual negotiations we dealt with the

1 United States always in good faith, and in any
2 action, in any matter one's view as to how things
3 would develop and the steps one actually takes are
4 two separate matters.

5 Q In other words, what you are speaking of
6 here are negotiations that were to be falsely con-
7 ducted, is that true?

8 A As I have repeatedly said, our view of how
9 things would develop, how things might develop,
10 was as I have said, but as far as the negotiations
11 were concerned we went at them in all earnestness
12 and hoped that America would reconsider. We had no
13 intention of deceiving anyone.

14 Q Knowing full well that the negotiations
15 would fail, you nevertheless, in this note, state
16 and advise that care should be taken not to create
17 the impression of a break-off of negotiations.
18 That was solely for the purpose of carrying out the
19 plan of Admiral ITO, was it not, to deliver a
20 surprise attack at the opening of hostilities?

21 A From beginning to end, all that we hoped
22 for was for the amicable solution of negotiations
23 and we had nothing whatever to do with operational
24 matters or the actual conduct of the war.

25 THE PRESIDENT: We will adjourn until half-

YAMAMOTO

CROSS

26,304

1 past nine tomorrow morning.

2 (Whereupon, at 1600, an adjournment
3 was taken until Wednesday, 20 August, 1947,
4 at 0930.)
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